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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, March 12, 2013
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741-6008

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register

Vol. 78, No. 32

Friday, February 15, 2013

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2012–1236; Special Conditions No. 25–477–SC]

Special Conditions: Bombardier Aerospace, Model BD–500–1A10 and BD–500–1A11 Airplanes; Sidestick Controllers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Bombardier Aerospace Model BD–500–1A10 and BD–500–1A11 airplanes. These airplanes will have a novel or unusual design feature, specifically sidestick controllers designed to be operated with only one hand. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: *Effective Date:* March 18, 2013.

FOR FURTHER INFORMATION CONTACT: Todd Martin, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–1178; facsimile 425–227–1232.

SUPPLEMENTARY INFORMATION:

Background

On December 10, 2009, Bombardier Aerospace applied for a type certificate for their new Model BD–500–1A10 and BD–500–1A11 airplanes. The Model BD–500–1A10 and BD–500–1A11 airplanes are swept-wing monoplanes with pressurized cabins, and they share an identical supplier base and significant common design elements. The fuselages are aluminum alloy material, blended double-bubble fuselages, sized for nominal five-abreast seating. Each airplane's powerplant includes two under-wing Pratt and Whitney PW1524G ultra-high bypass, geared turbofan engines. The flight controls are fly-by-wire flight with two passive/uncoupled sidesticks. Avionics include five landscape primary cockpit displays. The dimension of the aircraft encompasses a wingspan of 115 feet; height of 37.75 feet; and length of 114.75 feet for the Model BD–500–1A10 and length of 127 feet for the Model BD–500–1A11. Passenger capacity is designated as 110 for the Model BD–500–1A10 and 125 for the Model BD–500–1A11. Maximum takeoff weight is 131,000 pounds for the Model BD–500–1A10 and 144,000 pounds for the Model BD–500–1A11. Maximum takeoff thrust is 21,000 pounds for the Model BD–500–1A10 and 23,300 pounds for the Model BD–500–1A11. The range is 5,463 kilometres for both model airplanes. The maximum operating altitude is 41,000 feet for both model airplanes.

Bombardier Model BD–500–1A10 and BD–500–1A11 airplanes will be equipped with a sidestick controller instead of a conventional control column and wheel. This kind of controller is designed for only one-hand operation.

The requirement of Title 14, Code of Federal Regulations (14 CFR) 25.397(c), which defines limit pilot forces and torques for conventional wheel or stick controls, is not adequate for a sidestick controller. A special condition is necessary to specify the appropriate loading conditions for this kind of controller.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Bombardier Aerospace must show that the Model BD–500–1A10 and BD–500–1A11 airplanes meet the applicable provisions of part 25, as amended by Amendments 25–1 through 25–129 thereto.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Bombardier Aerospace Model BD–500–1A10 and BD–500–1A11 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Bombardier Aerospace Model BD–500–1A10 and BD–500–1A11 airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36 and the FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type-certification basis under § 21.17(a)(2).

Novel or Unusual Design Features

The Bombardier Aerospace Model BD–500–1A10 and BD–500–1A11 airplanes will incorporate the following novel or unusual design feature: A sidestick controller instead of a conventional control column and wheel. This kind of controller is designed for one-hand operation.

Discussion

The Bombardier Aerospace Model BD–500–1A10 and BD–500–1A11 airplanes are equipped with a sidestick controller instead of a conventional wheel or control stick. This kind of controller is designed to be operated using only one hand. The requirement of 14 CFR 25.397(c), which defines limit pilot forces and torques for conventional wheel or stick controls, is not adequate for a sidestick controller, because pilot forces are applied to sidestick controllers with only the wrist, not arms. A special condition is necessary to specify the appropriate loading conditions for a sidestick controller. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Discussion of Comments

Notice of proposed special conditions No. 25–12–14–SC for the Bombardier Aerospace Model BD–500–1A10 and BD–500–1A11 airplanes was published in the **Federal Register** on November 20, 2012 (77 FR 69568). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Bombardier Aerospace Model BD–500–1A10 and BD–500–1A11 airplanes. Should Bombardier Aerospace apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on Bombardier Aerospace Model BD–500–1A10 and BD–500–1A11 airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Model BD–500–1A10 and BD–500–1A11 airplanes by Bombardier Aerospace:

Limit Pilot Forces for Sidestick Control

In lieu of the pilot forces specified in § 25.397(c), for the Bombardier Model BD–500–1A10 and BD–500–1A11 airplanes equipped with sidestick controls designed for forces to be applied by one wrist and not arms, the limit pilot forces are as follows:

1. For all components between and including the handle and its control stops.

Pitch	Roll
Nose up 200 pounds force (Lbf) Nose down 200 Lbf	Nose Left 100 Lbf Nose Right 100 Lbf

2. For all other components of the sidestick control assembly, excluding the internal components of the electrical sensor assemblies, to avoid damage as a result of an in-flight jam.

Pitch	Roll
Nose up 125 lbf Nose down 125 lbf	Nose Left 50 lbf Nose Right 50 lbf

Issued in Renton, Washington, on February 12, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–03590 Filed 2–14–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 117, 119, and 121

[Docket No. FAA–2009–1093; Amdt. Nos. 117–1, 119–16, 121–357]

RIN 2120–AJ58

Flightcrew Member Duty and Rest Requirements; Technical Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; technical correction.

SUMMARY: The FAA is correcting the effective date of a final rule correction for flightcrew member duty and rest requirements published on February 6, 2013, that required technical corrections in the codified text of the final flightcrew member duty and rest rule. The correct effective date of the rule should read January 4, 2014.

DATES: *Effective date:* The effective date of a final rule correction published in the **Federal Register** of February 6, 2013 (78 FR 8361), is corrected from January 14, 2014, to January 4, 2014.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Dale E. Roberts, AFS–200, Flight Standards Service, Air Transportation Division Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–5749; email *dale.e.roberts@faa.gov.*

For legal questions concerning this action, contact Robert Frenzel, AGC–220, Office of Chief Counsel, Regulations Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3073; email: *robert.frenzel@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2012, the FAA published a final rule entitled ''Flightcrew Member Duty and Rest Requirements'' (77 FR 330). In that rule, the FAA created a new part, part 117, which replaced the then-existing flight, duty, and rest regulations for part 121 passenger operations. As part of this rulemaking, the FAA also applied the new part 117 to certain part 91 operations, and it permitted all-cargo operations operating under part 121 to voluntarily opt into the part 117 flight, duty, and rest regulations.

Subsequent to publication, the FAA discovered several issues requiring a technical correction in the regulatory text of the rule and published a final rule, technical correction on February 6, 2013 (78 FR 8361). The FAA realized that the effective date in this rule was inadvertently changed from January 4, 2014, to January 14, 2014.

This technical correction changes the effective date to January 4, 2014.

Issued in Washington, DC, on February 11, 2013.

Mark W. Bury,

Acting Assistant Chief Counsel for International Law, Legislation, and Regulations.

[FR Doc. 2013–03559 Filed 2–14–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 360

[Docket No.: 121016549–2549–01]

RIN 0625–AA93

Steel Import Monitoring and Analysis System

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce (the Department) publishes this action to make final a rule to extend the Steel Import Monitoring and Analysis (SIMA) system until March 21, 2017. The purpose of the SIMA system is to provide the public statistical data on steel imports entering the United States seven weeks earlier than it would otherwise be available to the public. Aggregate data collected from the licenses are made available to the public on a weekly basis following review by the Department.

DATES: This final rule is effective March 21, 2013.

FOR FURTHER INFORMATION CONTACT: For information about the SIMA system, please contact Steven Presing (202) 482–1672 or Julie Al-Saadawi (202) 482–1930.

SUPPLEMENTARY INFORMATION:

Background

The SIMA system has operated under its current authority since March 21, 2005. Prior to that date, authority for steel import licensing and monitoring was derived from Proclamation 7529 of March 5, 2002 (67 FR 10553). Pursuant to sections 201 and 203 of the 1974 Trade Act, 19 U.S.C. 2251, 2253, Proclamation 7529 implemented safeguard measures with respect to certain imported steel products, placing temporary tariffs on these steel imports and providing the steel industry time to restructure. The monitoring system outlined in Proclamation 7529 required all importers of steel products to obtain a license from the Department prior to completing their customs entry summary documentation. This provided a monitoring tool to ensure that the effectiveness of the steel safeguard measures was not undermined by large quantities of imports originating from countries that were excluded from the tariffs. In Proclamation 7741 of December 4, 2003 (68 FR 68483), the President terminated the steel safeguard measures, but directed the Secretary of Commerce to continue the monitoring system until the earlier of March 21, 2005, or such time as the Secretary of Commerce established a replacement program. On December 9, 2003, the Department published a notice stating that the system would continue in effect as described in Proclamation 7741 until March 21, 2005 (68 FR 68594). On August 25, 2004, the Department published an advance notice of proposed rulemaking soliciting comments from the public on whether to continue the monitoring system beyond March 21, 2005 (69 FR 52211). Formerly known as the Steel Import Licensing and Surge Monitoring program, the Department changed the program's name to the Steel Import Monitoring and Analysis (SIMA) system upon publication of the August 2004 advance notice. On March 11, 2005, the Department published an interim final rule responding to the comments received from the public and implementing a slightly expanded version of SIMA until March 21, 2009. That interim final rule was followed by the publication of the final rule on December 5, 2005 (70 FR 72373). On December 12, 2008, a proposed rule was published in the **Federal Register** (73 FR 75624) seeking an extension of the SIMA system through March 21, 2013 and asking for comments from the public. The Department received twelve submissions, all of which expressed support for the extension. The Department issued the final rule to extend the application of the SIMA system until March 21, 2013. On November 13, 2012 (77 FR 67593), the Department published a proposed rule seeking comments on an extension of the SIMA system through March 21, 2017. The Department received three submissions, all of which expressed support for the extension. The Department is issuing this final rule to extend the application of the SIMA system until March 21, 2017. No other changes are being made to the regulations for the SIMA system.

The purpose of the SIMA system is to provide steel producers, steel consumers, importers, and the general public with accurate and timely information on anticipated imports of certain steel products. Import licenses, obtained through the Internet-based SIMA licensing system, are required for U.S. imports of basic steel mill products. Aggregate import data obtained from the licenses are updated weekly and posted on the SIMA Web site monitor. Details of the current system can be found at *http://ia.ita.doc.gov/steel/license.*

Response to Comments

Submissions received during the public comment period established in the proposed rule have been considered in preparing this final rule. Three submissions were received from a coalition of eight steel trade groups (referred to as the ''industry''), a downstream steel products trade group and one of the largest steel producing companies in the United States. All of the submissions supported the four-year extension and agreed that the system is a critical tool that helps the industry to closely monitor steel imports. The comments are summarized below. The three submissions received are posted on the Federal rulemaking portal at www.Regulations.gov as well as on the SIMA Web site at *http://ia.ita.doc.gov/steel/license.*

Comment 1: Commenters strongly support the extension of the SIMA system for an additional four years. They state that given the volatility of world steel markets, the SIMA system gives the public access to the timeliest information possible regarding import patterns and changes, particularly increased volumes. They also view the system as an important and transparent tool to support rational decision-making by all interested parties—steel producers, steel consumers, importers and U.S. government officials.

Response: The Department agrees that the SIMA system provides the public valuable and timely information on steel mill imports. It also agrees that the public posting of aggregate import volume and pricing data drawn from the licenses provides all interested stakeholders with a more informed understanding of changing market conditions in a transparent manner.

Comment 2: Commenters state that there is no significant burden on the steel importing community to comply with the licensing requirements of the SIMA system and that this has been confirmed over the last four years in its current format, which remains unchanged by the proposed rule.

Response: The Department agrees that there is no significant burden on steel importers arising out of SIMA system licensing requirements. The web-based licensing system is automatic and free of charge. The Department estimates that it continues to take no longer than ten minutes to complete the automated license form, and for most applicants, the time spent is much less.

Comment 3: Commenters suggest that the Department make the SIMA system permanent rather than extend it for another four years. They state that the system has proven its effectiveness as an important analytical tool for both steel producers and consumers.

Response: Broad authority to collect information on imports is granted to the Secretary of Commerce and delegated to the Director of the Bureau of the Census. When the original safeguard authority for the SIMA system granted by the President expired in March 2005, the system was continued pursuant to this Department of Commerce information collection authority (13 U.S.C. 301(a) and 302). For purposes of administering the SIMA system, this authority was temporarily transferred from the Director of the Census Bureau to the Under Secretary for International Trade for four years. One of the conditions of the temporary transfer of authority to the Under Secretary for International Trade was that any future periodic extension of the SIMA system be notified to the Secretary and subject to review. Therefore, establishment of a permanent system is not possible under current authority.

Comment 4: As in 2005, commenters suggest that the Department add steel wire products to the SIMA licensing requirement and import monitor. This would provide advance notice of importation of these wire products to enable the steel wire downstream sector to evaluate economic and import patterns earlier than they would otherwise be publicly available. They indicate a particular interest in evaluating this data for products where there may be antidumping or countervailing duty orders in place.

Response: The Department intends to continue to monitor imports and exports of the specific steel-containing wire products identified in what is known as ''the downstream monitor.'' The downstream monitor uses publicly available trade data and is available in a separate section of the SIMA monitoring system. The Department will not expand coverage of the SIMA licensing requirement beyond steel mill products. Although the Department recognizes that certain segments of the steel industry are interested in the Department's licensing and monitoring of downstream steel products, the sheer volume of entries associated with many of these downstream steel products (e.g. nails and staples, springs, fittings and flanges, and wire hangers) greatly increases the burden of the system on the trading community and could potentially overwhelm the SIMA system.

Comment 5: Commenters propose shortening the period of time for which the licenses are valid, suggesting that applying for the licenses closer to the date of importation would increase the accuracy of the data gathered from the licenses.

Response: At this time the Department is not changing the period of time for which the licenses are valid. Based on the Department's extensive experience with SIMA, shortening the license time period would not meaningfully improve the accuracy of the program and may serve to increase the burden on parties. The 60-day advance period during which a license may be filed provides a reasonable period of time for parties to make all necessary business arrangements to ship goods while providing full transparency for all parties to better understand and properly anticipate market conditions. The Department currently provides the license applicant the opportunity to amend and/or cancel the licenses as needed to reflect the actual terms of the shipment, should there be changes after the license application.

For the reasons discussed above, the proposed rule (19 CFR part 360) is made final without changes.

Classification

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132

This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration at the proposed rule stage, that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities as that term is defined in the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The factual basis for the certification is found in the proposed rule and is not repeated here. No comments were received on the certification or the economic impacts of this action. As a result, no final regulatory flexibility analysis is required and none was prepared.

Paperwork Reduction Act

This final rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been approved by OMB (OMB No. 0625–0245; Expiration Date: 12/31/2014). Public reporting for this collection of information is estimated to be less than ten minutes per response, including the time for reviewing instructions and completing and reviewing the collection of information. All responses to this collection of information are voluntary, and will be provided confidentially to the extent allowed by law.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

List of Subjects in 19 CFR Part 360

Administrative practice and procedure, Business and industry, Imports, Reporting and recordkeeping requirements, Steel.

Dated: February 8, 2013.

Francisco J. Sánchez,

Under Secretary for International Trade.

For reasons discussed in the preamble, 19 CFR part 360 is amended to read as follows:

PART 360—STEEL IMPORT MONITORING AND ANALYSIS SYSTEM

■ 1. The authority citation for part 360 continues to read as follows:

Authority: 13 U.S.C. 301(a) and 302.

■ 2. Section 360.105 is revised to read as follows:

§ 360.105 Duration of the steel import licensing requirement.

The licensing program will be in effect through March 21, 2017, but may be extended upon review and notification in the **Federal Register** prior to this expiration date. Licenses will be required on all subject imports entered during this period, even if the entry summary documents are not filed until after the expiration of this program. The licenses will be valid for 10 business days after the expiration of this program to allow for the final filing of required Customs documentation.

[FR Doc. 2013–03619 Filed 2–14–13; 8:45 am]

BILLING CODE P

LABOR DEPARTMENT

Occupational Safety and Health Administration

29 CFR Part 1926

Safety and Health Regulations for Construction

CFR Correction

In Title 29 of the Code of Federal Regulations, Part 1926, revised as of July 1, 2012, on page 225, in § 1926.152, paragraph (c)(16) is added to read as follows:

§ 1926.251 Rigging equipment for material handling.

* * * * *

(c) * * *

(16) Wire rope slings shall have permanently affixed, legible identification markings stating size, rated capacity for the type(s) of hitch(es) used and the angle upon which it is based, and the number of legs if more than one.

* * * * *

[FR Doc. 2013–3755 Filed 2–14–13; 8:45 am]

BILLING CODE 1505–01–D

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans to prescribe interest assumptions under the regulation for valuation dates in March 2013. The interest assumptions are used for paying benefits under terminating single-employer plans covered by the pension insurance system administered by PBGC.

DATES: Effective March 1, 2013.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion (*Klion.Catherine@pbgc.gov*), Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR Part 4022) prescribes actuarial assumptions—including interest assumptions—for paying plan benefits under terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions in the regulation are also published on PBGC's Web site (*http://www.pbgc.gov*).

PBGC uses the interest assumptions in Appendix B to Part 4022 to determine whether a benefit is payable as a lump sum and to determine the amount to pay. Appendix C to Part 4022 contains interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology. Currently, the rates in Appendices B and C of the benefit payment regulation are the same.

The interest assumptions are intended to reflect current conditions in the financial and annuity markets. Assumptions under the benefit payments regulation are updated monthly. This final rule updates the benefit payments interest assumptions for March 2013.[1]

The March 2013 interest assumptions under the benefit payments regulation will be 1.00 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for February 2013, these interest assumptions represent an increase of 0.25 percent in the immediate annuity rate and are otherwise unchanged.

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the payment of benefits under plans with valuation dates during March 2013, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE–EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 233, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
233	3–1–13	4–1–13	1.00	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 233, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2

[1] Appendix B to PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR Part 4044) prescribes interest assumptions for valuing benefits under terminating covered single-employer plans for purposes of allocation of assets under ERISA section 4044. Those assumptions are updated quarterly.

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	*
233	3–1–13	4–1–13	1.00	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 7th day of February 2013.

Laricke Blanchard,

Deputy Director for Policy, Pension Benefit Guaranty Corporation.

[FR Doc. 2013–03544 Filed 2–14–13; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0066]

Drawbridge Operation Regulation; James River, Between Isle of Wight and Newport News, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the draw of the James River Draw Bridge across the James River, mile 5.0, between Isle of Wight and Newport News, VA. This deviation is necessary to facilitate generator replacement on the James River Draw Bridge. This temporary deviation will allow the drawbridge to remain in the closed-to-navigation position on specific dates and times.

DATES: This deviation is effective from 12:01 a.m. on February 16, 2013, until 5 a.m. on February 18, 2013; from 12:01 a.m. on February 23, 2013, until 5 a.m. on February 25, 2013; and from 12:01 a.m. on March 2, 2013, until 5 a.m. on March 4, 2013.

ADDRESSES: The docket for this notice, USCG–2013–0066, is available online at *www.regulations.gov* by typing in the docket number in the ''SEARCH'' box and clicking ''SEARCH.'' Next, click on the Open Docket Folder on the line associated with this notice. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Jim Rousseau, Bridge Administration Branch Fifth District, Coast Guard; telephone (757) 398–6557, email *James.L.Rousseau2@uscg.mil.* If you have questions on reviewing the docket, call Barbara Hairston, Program Manager, Docket Operations, 202–366–9826.

SUPPLEMENTARY INFORMATION: The Virginia Department of Transportation, who owns and operates this vertical lift bridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.5, to facilitate generator replacement on the structure.

Under the regular operating schedule, the James River Bridge, mile 5.0, between Isle of Isle and Newport News, VA opens on signal. The James River Bridge has vertical clearances in the open and closed position of 145 feet and 60 feet, above mean high water, respectively.

Under this temporary deviation, the drawbridge will be closed on weekends to navigation from 12:01 a.m. on February 16, 2013, until 5 a.m. on February 18, 2013; from 12:01 a.m. on February 23, 2013, until 5 a.m. on February 25, 2013; and from 12:01 a.m. on March 2, 2013 until 5 a.m. on March 4, 2013. If weather conditions are favorable during the first two weekends of the deviation, mariners will be notified via a broadcast notice to mariners and local media that the bridge will return to its regular operating schedule and that the third week of closure is no longer necessary.

Only emergency openings will be provided with up to a two-hour delay in opening. There are no alternate routes for vessels transiting this section of the James River.

The James River is used by a variety of vessels including freighters, tugs, and recreational vessels. The Coast Guard has carefully coordinated the restrictions with commercial and recreational waterway users. The Coast Guard will inform all users of the waterway through our Local and Broadcast Notice to Mariners of the closure periods for the bridge so that vessels can arrange their transits to minimize any impacts caused by the temporary deviation. Mariners able to pass under the bridge in the closed position may do so at any time. Mariners are advised to proceed with caution.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 5, 2013.

Waverly W. Gregory, Jr.,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2013–03546 Filed 2–14–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2013–0036]

RIN 1625–AA00

Safety Zone; Lake Worth Dredge Operations, Lake Worth Inlet; West Palm Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Worth Inlet, West Palm Beach, Florida, to provide for the safety of life and vessels during dredge operations. A safety zone will need to be enforced for 90 minutes on two separate occasions during a two week period. The time of enforcement will be publicized as soon as practical. During the time of enforcement, persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Miami or a designated representative.

DATES: This rule is effective from February 15, 2013, through February 20, 2013, but has been enforced with actual notice since February 4, 2013. This rule will be enforced for two 90 minute periods which will occur during the period of February 4, 2013, through February 20, 2013. The public will be notified of the specific times of the two separate 90 minute periods via Broadcast Notice to Mariners.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2013–0036. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade Mike H. Wu, Sector Miami Prevention Department, Coast Guard; telephone (305) 535–7576, email *Mike.H.Wu@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive all information regarding the dredging operation until January 30, 2013. As a result, it was not until that time that the Coast Guard had sufficient information regarding the necessity to move dredging equipment during ongoing dredging operations, and therefore there was insufficient time to publish an NPRM and to receive public comments prior to the operations. Any delay in the effective date of this rule would be contrary to the public interest because this rule is needed to provide for the safety of life on a navigable waterway of the United States.

For the same reason discussed above, under 5 U.S.C. 553(d)(3) the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of the rule is to provide for the safety of life and vessels on a navigable waterway of the United States during dredging operations.

C. Discussion of the Rule

For two 90 minute periods, between Monday, February 4, 2013, and Wednesday, February 20, 2013, dredging operations will be conducted on Lake Worth Inlet in West Palm Beach, Florida. These operations will impede the safe navigation of vessel traffic on the waterway.

The temporary safety zone encompasses all waters of Lake Worth Inlet from the end of the jetties at the eastern entrance to the southwestern corner of Singer Island and then due south across the inlet to Palm Beach Island. This safety zone will be enforced for two 90 minute periods between February 4 and February 20, 2013, during dredge operations.

Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Miami or a designated representative.

Persons and vessels desiring to enter, transit through, anchor in, or remain within the safety zone may contact the Captain of the Port Miami by telephone at 305–535–4472, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The economic impact of this rule is not significant for the following reasons: (1) The safety zone will be enforced for a maximum of 90 minutes on two separate days; (2) persons and vessels may enter, transit through, anchor in, or remain within the safety zone if authorized by the Captain of the Port Miami or a designated representative; (3) persons and vessels not authorized by the Captain of the Port Miami or designated representative to enter, transit through, anchor in, or remain within the safety zone may operate in the surrounding area during the enforcement period; and (4) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Broadcast Notice to Mariners and on-scene representatives.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within the safety zone established by this regulation during the respective enforcement period.

For the reasons discussed in the Regulatory Planning and Review section above, this rule will not have a significant economic impact on a substantial number of small entities.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the creation of a temporary safety zone. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 165.T07–0036 to read as follows:

§ 165.T07–0036 Safety Zone; Lake Worth Dredge Ops, Lake Worth Inlet; West Palm Beach, FL.

(a) *Regulated area.* The following regulated area is a safety zone. All waters of Lake Worth Inlet, West Palm Beach, FL, encompassed within the following points: starting at Point 1 in position 26°46′25″ N, 80°02′20″ W; thence east to Point 2 in position 26°46′25″ N, 80°01′51″ W; thence southwest to Point 3 in position 26°46′17″ N, 80°01′53″ W; thence west to Point 4 in position 26°46′17″ N, 80°02′20″ W; thence north back to origin. All coordinates are North American Datum 1983.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated area.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Miami or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Miami by telephone at 305–535–4472, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Broadcast Notice to Mariners and on-scene designated representatives.

(d) *Effective date.* This rule is in force from February 4, 2013, through February 20, 2013. This rule will be enforced for two 90 minute periods which will occur between February 4, 2013, and February 20, 2013.

Dated: February 1, 2013.

J. B. Pruett,

Captain, U.S. Coast Guard, Acting Captain of the Port Miami.

[FR Doc. 2013–03533 Filed 2–14–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2013–0032]

RIN 1625–AA00

Artificial Island Anchorage No. 2 Partial Closure, Delaware River; Salem, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard will be establishing a temporary safety zone around the southern portion of Anchorage #2 (Artificial Island Anchorage) below position 39°29′20″ N-075°33′30″ W to position 39°29′12.5″ N-075°33′0″ W due to dredging operations. The hopper dredge STUYVESANT will be working in the area, and 4,000 feet of submerged pipe line will cross the closed portion of the anchorage. This regulation is necessary to provide for the safety of life on the navigable waters of the Artificial Island Anchorage. This closure is intended to restrict vessel anchoring to protect mariners from the hazards associated with an ongoing dredging operation.

DATES: This rule is effective on February 15, 2013 until June 15, 2013, unless cancelled earlier by the Captain of the Port. This rule has been enforced with actual notice from February 1, 2013, until February 15, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2013–0032. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Veronica Smith, Waterways Management Branch, Sector Delaware Bay, U.S. Coast Guard; telephone (215) 271–4851, email *veronica.l.smith@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because final details for this dredging operation were not provided until January 24, 2013. As such, it is impracticable to provide a full comment period due to lack of time. The dredging operation will begin on February 1, 2013 and will continue until June 15, 2013 unless completed earlier.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because immediate action is necessary to protect the maritime public and facilitate the dredging operation, and therefore a delay in enacting this safety zone would also be impracticable.

B. Basis and Purpose

Dutra Dredging Company has been contracted by the Army Corps of Engineers on the Delaware River channel deepening project. A portion of this project requires the use of submerged and floating pipelines crossing the lower portion of the Artificial Island Anchorage (No. 2). Due to the presence of the submerged pipeline, vessels are not permitted to anchor in the southern portion of the anchorage. This regulation is necessary because there will be an ongoing dredging operation to deepen the Delaware River channel in the Reedy Island Range from February 1, 2013, until June 15, 2013. The Captain of the Port will reopen this portion of the anchorage once all submerged pipeline has been recovered and dredging operations are completed. At such time, notice that the temporary closure of the anchorage is no longer in effect will be broadcast to mariners. The Captain of the Port is establishing this safety zone to ensure the safety of life and property of all mariners and vessels transiting the local area.

C. Discussion of the Final Rule

The Coast Guard Captain of the Port Delaware Bay is temporarily establishing a safety zone closing the southern portion of Artificial Island Anchorage from February 1, 2013, until June 15, 2013, unless cancelled earlier by the Captain of the Port. The boundary line for the temporary safety zone includes the southern portion of Artificial Island Anchorage, below position 39°29′20″ N -075°33′30″ W to position 39°29′12.5″ N -075°33′0″ W and extending to the southern boundary according to NOAA chart 12311. Vessels will not be permitted to anchor in this portion of Artificial Island Anchorage.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking.

Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this regulation will restrict access to the regulated area, the effect of this rule will not be significant because: (i) The Coast Guard will make extensive notification of the closure to the maritime public via maritime advisories so mariners can alter their plans accordingly, and (ii) this rule will be enforced for only the duration of dredging operations.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule will affect the following entities, some of which may be small entities: The owners or operators of the vessels intending to anchor in the southern portion of Artificial Island Anchorage from February 1, 2013, until June 15, 2013, unless cancelled earlier by the Captain of the Port.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Vessels will be allowed utilize the upper portion of Artificial Island Anchorage and nearby anchorages with permission of the Coast Guard Captain of the Port Delaware Bay or her representative. Sector Delaware Bay will issue maritime advisories widely accessible to users of the Anchorage informing them of the safety zone.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INTFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR Part 165, applicable to safety zones on the navigable waterways. This zone will temporarily restrict vessels from utilizing the southern portion of Artificial Island Anchorage in order to protect the safety of life and property on the waters while dredging operations are conducted. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add 165.T05–0032, to read as follows:

§ 165.T05–0032 Safety Zone Within the Lower Portion of Anchorage #2, Artificial Island Anchorage; Salem, NJ.

(a) Location. The southern portion of the Anchorage #2 (Artificial Island Anchorage), below position 39°29′20″ N -075°33′30″ W to position 39°29′12.5″ N -075°33′0″ W and extending to the southern boundary according to NOAA chart 12311.

(b) Enforcement period. This section is enforced February 1, 2013, until June 15, 2013, unless cancelled earlier by the Captain of the Port.

(c) *Regulations.* All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.23.

(1) All persons and vessels utilizing the southern portion of the anchorage must be authorized by the Captain of the Port or her representative.

(2) This section applies to all vessels wishing to anchor in the safety zone within Artificial Island Anchorage except vessels that are engaged in the following operations:

(i) Enforcing laws;

(ii) Servicing aids to navigation; and

(iii) Emergency response vessels.

(3) No person may bring or cause to be brought into the safety zone any vehicle, vessel, or object unless authorized by the Captain of the Port.

(4) No person or vessel may enter or remain in the safety zone without the permission of the Captain of the Port.

(5) Each person and vessel in the safety zone shall obey any direction or order of the Captain of the Port.

Dated: February 1, 2013.

T. C. Wiemers,

CAPT, U.S. Coast Guard, Alternate Captain of the Port Sector Delaware Bay.

[FR Doc. 2013–03550 Filed 2–14–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–1092]

RIN 1625–AA00

Safety Zone Within the Lower Portion of Anchorage #9, Mantua Creek Anchorage; Paulsboro, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard will be extending a temporary safety zone around the southern one-third of Anchorage #9 (Mantua Creek Anchorage), below position 39° 51.573 N-075° 13.557 W due to dredging operations. The Dredge Florida will be working along with several support barges and tugs to install approximately 8,000 feet of submerged pipeline and approximately 3,000 feet of floating pipeline crossing through this portion of the anchorage. This regulation is necessary to provide for the safety of life on the navigable waters of the Mantua Creek Anchorage. This closure is intended to restrict vessel anchoring to protect mariners from the hazards associated with an ongoing dredging operation.

DATES: This rule is effective on February 15, 2013 until March 1, 2013, unless cancelled earlier by the Captain of the Port. This rule has been enforced with actual notice from February 1, 2013, until February 15, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–1092. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Lieutenant Veronica Smith, U.S. Coast Guard, Sector Delaware Bay, Acting Chief of Waterways Management Division, Coast Guard; telephone 215–271–4851, email *veronica.l.smith@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM with respect to this rule because final details for this dredging operation were not provided until January 24, 2013. Initially, the Coast Guard was advised by Dredge Florida that the operations would be complete on January 31, 2013, which is reflected in the rule published in 78 FR 3326. However, on January 24, 2013, the Coast Guard was notified by Dredge Florida that mechanical failures would delay the completion of the dredging operations until on or around March 1, 2013. As such, it is impracticable to provide a full comment period due to lack of time. Further, immediate action is necessary to protect the maritime public and facilitate the dredging operation, and therefore a delay in continuing this safety zone would be impracticable. The dredging began on December 20th, 2012, and will continue until March 1, 2013 unless completed earlier.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** as any delay encountered in this regulation's effective date would be impracticable because immediate action is needed to provide for the safety of life and property from the hazards associated with the dredging operation.

B. Basis and Purpose

The Great Lakes Dredging Company has been working with the Army Corps of Engineers on the Delaware River channel deepening project. A portion of this project requires the use of submerged and floating pipelines crossing the lower portion of the Mantua Creek Anchorage. Due to the presence of the submerged pipeline, vessels are not permitted to anchor in the southern one-third of the anchorage. This regulation is necessary because there will be an ongoing dredging operation to deepen the Delaware River channel in the Mifflin and Billingsport Ranges from December 20, 2012 until March 1, 2013. The Captain of the Port will reopen this portion of the anchorage once all submerged pipeline has been recovered and dredging operations are completed. At such time, notice that the temporary closure of the anchorage is no longer in effect will be broadcast to mariners. The Captain of the Port is establishing this safety zone to ensure the safety of life and property of all mariners and vessels transiting the local area.

C. Discussion of the Final Rule

The Coast Guard Captain of the Port Delaware Bay is temporarily continuing a safety zone closing the southern one-third of the Mantua Creek Anchorage from February 1, 2013, until March 1, 2013, unless cancelled earlier by the Captain of the Port. The boundary line for the temporary safety zone includes the southern one-third portion of Mantua Creek Anchorage, beginning at position 39° 51.573 N-075° 13.557 W and extending to the southern boundary according to NOAA chart 12312. Vessels will not be permitted to anchor in this portion of Mantua Creek Anchorage unless they receive authorization from the Captain of the Port Delaware Bay or her representative. Such requests must be made 24 hours prior to the intended use of the Mantua Creek Anchorage. Vessels may contact the Captain of the Port Delaware Bay or her representative in order to obtain authorization by contacting Coast Guard Sector Delaware Bay at: (215) 271–4940. After evaluating the current conditions and status of dredging operation, the Captain of the Port Delaware Bay or her representative will notify the requesting vessel whether they are authorized to anchor in the safety zone within Mantua Creek Anchorage, and will provide any other directions for their request.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this regulation will restrict access to the regulated area, the effect of this rule will not be significant because: (i) The Coast Guard will make extensive notification of the closure to the maritime public via maritime advisories so mariners can alter their plans accordingly; (ii) vessels may still be permitted to anchor in the safety zone with the permission of the Captain of the Port on a case-by-case basis; and (iii) this rule will be enforced for only the duration of dredging operations.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of the vessels intending to anchor in the safety zone within Mantua Creek Anchorage from February 1, 2013, until March 1, 2013, or unless cancelled earlier by the Captain of the Port.

This closure will not have a significant economic impact on a substantial number of small entities for the following reason: Vessels will be allowed utilize the upper two-thirds of the Mantua Creek Anchorage, and nearby anchorages with permission of the Coast Guard Captain of the Port Delaware Bay or her representative. Sector Delaware Bay will issue maritime advisories widely accessible to users of the Anchorage informing them of the safety zone.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INTFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR part 165, applicable to safety zones on the navigable waterways. This zone will temporarily restrict vessels from utilizing the southern one-third of Mantua Creek Anchorage in order to protect the safety of life and property on the waters while dredging operations are conducted. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise paragraph (a) of § 165.T05–1092 to read as follows:

§ 165.T05–1092 Safety Zone Within the Lower Portion of Anchorage #9, Mantua Creek Anchorage; Paulsboro, NJ.

* * * * *

(a) *Enforcement period.* This rule is enforced December 20, 2012, until March 1, 2013, unless cancelled earlier by the Captain of the Port.

* * * * *

Dated: February 1, 2013.

T. C. Wiemers,

Captain, U.S. Coast Guard, Alternate Captain of the Port Delaware Bay.

[FR Doc. 2013–03555 Filed 2–14–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–HQ–OAR–2012–0393; FRL–9779–5]

RIN 2060–AQ38

Air Quality: Revision to Definition of Volatile Organic Compounds—Exclusion of *trans* 1-chloro-3,3,3-trifluoroprop-1-ene [Solstice™ 1233zd(E)]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action to revise the definition of volatile organic compounds (VOCs) for purposes of preparing state implementation plans (SIPs) to attain the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act (CAA). This direct final action adds *trans* 1-chloro-3,3,3-trifluoroprop-1-ene (also known as Solstice™ 1233zd(E)) to the list of compounds excluded from the definition of VOCs on the basis that this compound makes a negligible contribution to tropospheric ozone formation.

DATES: This rule is effective May 16, 2013 without further notice, unless the EPA receives adverse comment by April 1, 2013. If the EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the final rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2012–0393, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-Docket@epamail.epa.gov,* Attention Docket ID No. EPA–HQ–OAR–2012–0393.
- *Fax:* 202–566–1541, Attention Docket ID No. EPA–HQ–OAR–2012–0393.
- *Mail:* Docket ID No. EPA–HQ–OAR–2012–0393, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue NW., Room: 3334, Mail Code: 6102T, Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2012–0393. Such deliveries are only accepted during the Docket's normal hours of operation, and

special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2012–0393. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov,* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Docket ID No. EPA–HQ–OAR–2012–0393, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT:
David Sanders, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C539–01, Research Triangle Park, NC 27711; telephone: (919) 541–3356; fax number: 919–541–0824; email address: *sanders.dave@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Why is the EPA using a direct final rule?

The EPA is publishing this direct final rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. This action revises the EPA's definition of VOCs for purposes of preparing SIPs to attain the NAAQS for ozone under title I of the CAA. However, in the ''Proposed Rules'' section of this **Federal Register**, we are publishing a separate document that will serve as the proposed rule to make this revision to the definition of VOCs if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, *see* the **ADDRESSES** section of this document.

If the EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

II. Does this action apply to me?

Entities potentially affected by this direct final rule include, but are not necessarily limited to, state and local air pollution control agencies that adopt and implement regulations to control air emissions of VOCs; industries involved in the manufacture or use of refrigerants, aerosol and non-aerosol solvents, and blowing agents for insulating foams; and manufacturers of refrigeration equipment, hot water heaters and waste heat recovery equipment.

III. Background

A. The EPA's VOC Exemption Policy

Tropospheric ozone, commonly known as smog, is formed when VOCs and nitrogen oxides (NOx) react in the atmosphere in the presence of sunlight. Because of the harmful health effects of ozone, the EPA and state governments limit the amount of VOCs that can be released into the atmosphere. VOCs are those organic compounds of carbon that form ozone through atmospheric photochemical reactions. Different VOCs have different levels of reactivity. That is, they do not react to form ozone at the same speed or do not form ozone to the same extent. Some VOCs react slowly or form less ozone; therefore, changes in their emissions have less and, in some cases, very limited effects on local or regional ozone pollution episodes. It has been the EPA's policy that organic compounds with a negligible level of reactivity should be excluded from the regulatory VOC definition so as to focus VOC control efforts on compounds that do significantly increase ozone concentrations. The EPA also believes that exempting such compounds creates an incentive for industry to use negligibly reactive compounds in place of more highly reactive compounds that are regulated as VOCs. The EPA lists compounds that it has determined to be negligibly reactive in its regulations as being excluded from the definition of VOC. (40 CFR 51.100(s)).

The CAA requires the regulation of VOCs for various purposes. Section

302(s) of the CAA specifies that the EPA has the authority to define the meaning of ''VOC,'' and hence what compounds shall be treated as VOCs for regulatory purposes. The policy of excluding negligibly reactive compounds from the VOC definition was first set forth in the ''Recommended Policy on Control of Volatile Organic Compounds'' (42 FR 35314, July 8, 1977) and was supplemented most recently with the ''Interim Guidance on Control of Volatile Organic Compounds in Ozone State Implementation Plans'' (Interim Guidance) (70 FR 54046, September 13, 2005). The EPA uses the reactivity of ethane as the threshold for determining whether a compound has negligible reactivity. Compounds that are less reactive than, or equally reactive to, ethane under certain assumed conditions may be deemed negligibly reactive and therefore suitable for exemption from the regulatory definition of VOC. Compounds that are more reactive than ethane continue to be considered VOCs for regulatory purposes and therefore are subject to control requirements. The selection of ethane as the threshold compound was based on a series of smog chamber experiments that underlay the 1977 policy.

The EPA has used three different metrics to compare the reactivity of a specific compound to that of ethane: (i) The reaction rate constant (known as k_{OH}) with the hydroxyl radical (OH); (ii) the maximum incremental reactivity (MIR) on a reactivity per unit mass basis; and (iii) the MIR expressed on a reactivity per mole basis. Differences between these three metrics are discussed below.

The k_{OH} is the reaction rate constant of the compound with the OH radical in the air. This reaction is typically the first step in a series of chemical reactions by which a compound breaks down in the air and participates in the ozone-forming process. If this step is slow, the compound will likely not form ozone at a very fast rate. The k_{OH} values have long been used by the EPA as a metric of photochemical reactivity and ozone-forming activity, and they have been the basis for most of the EPA's previous exclusions of negligibly reactive compounds from the regulatory definition of VOC. The k_{OH} metric is inherently a molar-based comparison, i.e., it measures the rate at which molecules react.

The MIR, both by mole and by mass, is a more recently developed metric of photochemical reactivity derived from a computer-based photochemical model. This metric considers the complete ozone forming activity of a compound on a single day, and not merely the first reaction step.[1]

The MIR values for compounds are typically expressed as grams of ozone formed per gram of VOC (mass basis), but may also be expressed as grams of ozone formed per mole of VOC (molar basis). For comparing the reactivities of two compounds, use of the molar-based MIR values compares an equal number of molecules of the two compounds. Alternatively, use of the mass-based MIR values compares an equal mass of the two compounds, which involves a different numbers of molecules, depending on the relative molecular weights. The molar-based MIR comparison is consistent with the original smog chamber experiments that underlie the original selection of ethane as the threshold compound, in that these experiments compared equal molar concentrations of individual VOCs. It is also consistent with previous reactivity determinations based on k_{OH} values, which are inherently molar-based. By contrast, the mass-based MIR comparison is more consistent with how MIR values and other reactivity metrics have been applied in reactivity-based emission limits, such as the relatively recent national VOC emissions standards for aerosol coatings (40 CFR part 59 subpart E, promulgated in 2008), in which the mass fraction of each coating component is multiplied by its mass-based MIR value. Many older VOC regulations contain limits on the mass of VOC per volume of product without reactivity weighting. An example of this latter type of regulation is the EPA's regulation for limiting VOC emissions from architectural coatings (40 CFR part 59 subpart D, promulgated in 1998). This type of regulation allows substitution of a gram of one VOC for a gram of another VOC, without regard to the number of moles in a gram or individual reactivity values, thus making compliance simpler for regulated producers and enforcement simpler for air agencies. However, the fact that regulations are structured to limit VOC content by reactivity-weighted mass fraction or by mass for ease of implementation and enforcement does not necessarily control whether VOC exemption decisions should be made on a weight basis as well.

The choice of the molar basis versus the mass basis for the ethane comparison can be significant. In some cases, a compound might be considered less reactive than ethane under the mass basis but not under the molar basis. For compounds with molecular weights higher than that of ethane, use of the mass basis results in more VOCs being classified as less reactive than ethane than does use of the molar basis.

The EPA has considered the choice between a molar or mass basis for the comparison to ethane in past rulemakings and guidance. In the Interim Guidance, the EPA stated:

> [A] comparison to ethane on a mass basis strikes the right balance between a threshold that is low enough to capture compounds that significantly affect ozone concentrations and a threshold that is high enough to exempt some compounds that may usefully substitute for more highly reactive compounds.
>
> When reviewing compounds that have been suggested for VOC-exempt status, EPA will continue to compare them to ethane using k_{OH} expressed on a molar basis and MIR values expressed on a mass basis.

The EPA's 2005 Interim Guidance also noted that concerns have sometimes been raised about the potential impact of a VOC exemption on environmental endpoints other than ozone concentrations, including fine particle formation, air toxics exposures, stratospheric ozone depletion and climate change. The EPA has recognized, however, that there are existing regulatory and non-regulatory programs that are specifically designed to address these issues, and the EPA continues to believe that the impacts of VOC exemptions on environmental endpoints other than ozone formation will be adequately addressed by these programs. The VOC exemption policy is intended to facilitate attainment of the ozone NAAQS, and questions have been raised as to whether the agency has authority to use its VOC exemption policy to address concerns that are unrelated to ground-level ozone. In general, VOC exemption decisions will continue to be based solely on consideration of a compound's contribution to ozone formation. However, if the EPA determines that a particular VOC exemption is likely to result in a significant increase in the use of a compound and that the increased use would pose a significant risk to human health or the environment that would not be addressed adequately by existing programs or policies, the EPA reserves the right to exercise its judgment in deciding whether to grant an exemption.

B. Petition to List Solstice™ 1233zd(E) as an Exempt Compound

Honeywell, Inc. submitted a petition to the EPA on July 19, 2011, requesting that *trans* 1-chloro-3,3,3-trifluoroprop-1-ene (also known as Solstice™

[1] Further explanation of the MIR metric can be found in Carter, 1994.

1233zd(E); CAS number 102687–65–0) be exempted from VOC control based on its low reactivity relative to ethane.[2] The petitioner indicated that Solstice™ 1233zd(E) may be used in variety of applications, including as a solvent in aerosol and non-aerosol applications, as a blowing agent in insulating foams for refrigerators/freezers and hot water heaters, and as a refrigerant in commercial chillers and waste heat recovery (Rankin cycle) systems. In the foam blowing applications, Solstice™ 1233zd(E) will compete with HFC–245fa, HFC–365mfc and cyclopentane. Solstice™ 1233zd(E) will compete with HFC–245fa and HFC–134a in refrigerant applications and with HCFC–225ca, HCFC–225cb, HFC–43–10mee and methyl chloroform in aerosol solvent applications.[3] These applications have been approved by the EPA's Significant New Alternatives Policy (SNAP) Program (*see* section III.D).[4]

To support its petition, Honeywell submitted several documents, including a technical report on the maximum incremental reactivity of Solstice™ 1233zd(E) (Carter, 2009); two peer-reviewed journal articles on its atmospheric chemistry, reaction rates, atmospheric lifetimes and ozone depletion potentials (Patten and Wuebbles, 2010; Sulbaek Anderson et al., 2008); a technical report on ozone depletion (Wang et al., 2011); a technical report on its global warming potential (GWP) (Wang et al., 2012); and a summary of toxicity studies for Solstice™ 1233zd(E) (Honeywell, 2011). All of these have been added to the docket for this action. In summarizing the content of these documents, Honeywell states that Solstice™ 1233zd(E) has low ozone reactivity, low GWP, low contribution to ozone depletion and low toxicity, and that the use of the compound avoids the fire risk of using cyclopentane as a foam blowing agent.

C. Premanufacture Notification Review of Solstice™ 1233zd(E)

The Toxics Substances Control Act (TSCA) requires the EPA to assess and prevent any unreasonable risks to human health and the environment before a new chemical substance is introduced into commerce. Section 5 of TSCA requires manufacturers and importers to notify the EPA before manufacturing or importing a new chemical substance. Under the Premanufacture Notification (PMN) Review Process, the EPA then performs a risk assessment on the new chemical substance to determine if an unreasonable risk may, or will, be presented by the expected use of the new substance. Finally, the EPA makes risk management decisions and takes action to control any unreasonable risks posed by new chemical substances. Under TSCA, the EPA is allowed 90 days to review each substance, extendable to 180 days under certain conditions.

As a new chemical not yet introduced into commerce, Solstice™ 1233zd(E) has recently completed a PMN review on January 30, 2012. After considering all relevant data currently available, the EPA was unable to find any unreasonable risks to human health or the environment from the expected use of the substance. Based on this finding, the EPA did not find it necessary to take any actions to prevent unreasonable risk under TSCA. Once the EPA is informed that production of the compound has started, it will be added to the TSCA inventory of chemical substances that are produced or imported in the U.S.

D. Significant New Alternatives Policy Program Review of Solstice™ 1233zd(E)

The SNAP program is the EPA's program to evaluate and regulate substitutes for the ozone-depleting substances (ODSs) that are being phased out under the stratospheric ozone protection provisions of the CAA. In section 612(c) of the CAA, the agency is authorized to identify and publish lists of acceptable and unacceptable substitutes for class I or class II ozone-depleting substances.[5] The EPA's SNAP program has evaluated the use of Solstice™ 1233zd(E). The review considered information on the effects, if any, of the compound on stratospheric ozone depletion, tropospheric ozone, ecosystem effects from deposition and toxicity to humans. On August 10, 2012, the SNAP program published a determination finding Solstice™ 1233zd(E) acceptable for use as a foam blowing agent for certain products, as a refrigerant in new centrifugal chillers and as an aerosol solvent. 77 FR 47768. However, the SNAP program is currently still reviewing Solstice™ 1233zd(E) for use as a refrigerant for non-mechanical heat transfer and as a solvent for cleaning or for adhesives and coatings. Thus, at this time, it would be a violation of the CAA and the SNAP program regulations for any person to introduce Solstice™ 1233zd(E) into interstate commerce for use in any of these end uses regulated by the SNAP program.

IV. The EPA's Assessment of the Petition

The EPA is taking direct final action to approve the petition for exemption of Solstice™ 1233zd(E) from the definition of VOC. This action is consistent with the Interim Guidance based on the three reactivity metric values for Solstice™ 1233zd(E) compared to the corresponding values for ethane; our inability in the Premanufacture Notification Review Program to find any unreasonable risks to human health or the environment from the expected use of the substance; our finding in the SNAP program review of this chemical that use of this chemical in currently allowed applications does not pose a significant risk to human health or the environment; and our confidence that the SNAP program will prevent the use of this chemical in any additional applications where such use would pose a significant risk to human health or the environment. We also believe that the much lower GWP of Solstice™ 1233zd(E) relative to one of the chemicals it can replace, as described in section IV.C, is an additional reason to approve the VOC exemption for this chemical and thus encourage its use, given that applying the Interim Guidance itself supports such approval.

A. Contribution to Tropospheric Ozone

The reaction rate of ethane with OH is 2.4×10^{-13} cm³/molecule-sec. The corresponding reaction rate of Solstice™ 1233zd(E) for reaction with OH radical (k_{OH}) has been measured to be 4.40×10^{-13} cm³/molecule-sec (Sulbaek Andersen et al., 2008); other reactions with ozone and nitrate radical were negligibly small. The difference between the two k_{OH} values is not significant; but still, Solstice™ 1233zd(E) is above the ethane benchmark.

The overall atmospheric reactivity of Solstice™ 1233zd(E) was studied in an experimental smog chamber and the chemical mechanism derived from this study was used to model the complete formation of ozone for an entire single day under ''realistic'' atmospheric conditions (Carter, 2009). Using the standard 39-city array of input conditions, Carter calculated a MIR value of 0.040 g O_3/g VOC for Solstice™

[2] *Trans* 1-chloro-3,3,3-trifluoroprop-1-ene will also be marketed by Honeywell under the trade names Solstice™ N12 Refrigerant, Solstice™ Liquid Blowing Agent, Solstice™ LBA, and Solstice™ Performance Fluid.

[3] Of the compounds listed here as competitors, all but cyclopentane have already been excluded by the EPA from the definition of VOC.

[4] The SNAP program approval refers to Solstice™ 1233zd(E) as a substitute certain ODSs, rather than as a substitute for the currently marketed compounds with which it will compete.

[5] Information on the SNAP program can be found on the following Web page: *www.epa.gov/ozone/snap*.

1233zd(E) for ''averaged conditions,'' versus 0.28 g O_3/g VOC for ethane.[6]

Table 1 presents the three reactivity metrics for Solstice™ 1233zd(E) as they compare to ethane.

TABLE 1—REACTIVITIES OF ETHANE AND SOLSTICE™ 1233ZD(E)

Compound	k_{OH} (cm³/molecule-sec)	Maximum incremental reactivity (MIR) (g O_3/mole VOC)	Maximum incremental reactivity (MIR) (g O_3/g VOC)
Ethane	2.4×10^{-13}	8.4	0.28
Solstice™ 1233zd(E)	4.40×10^{-13}	5.22	0.040

Notes:
1. k_{OH} value for ethane is from Atkinson et al., 2006 (page 3626).
2. k_{OH} value for Solstice™ 1233zd(E) is from Sulbaek Andersen et al., 2008.
3. Mass-based MIR value (g O3/g VOC) of ethane is from Carter, 2010 (page 178). The value of 0.28 is slightly different than the value of 0.268 reported in Carter, 2009. The EPA does not consider this slight difference to be material.
4. Mass-based MIR value of Solstice™ 1233zd(E) is from Carter, 2009.
5. Molar-based MIR (g O_3/mole VOC) values were calculated from the mass-based MIR (g O_3/g VOC) values using the number of moles per gram of the relevant organic compound.

From the data in Table 1, it can be seen that Solstice™ 1233zd(E) has a higher k_{OH} value than ethane, meaning that it initially reacts more quickly in the atmosphere than ethane. However, a molecule of Solstice™ 1233zd(E) is less reactive than a molecule of ethane in terms of complete ozone forming activity as shown by the molar-based MIR (g O_3/mole VOC) values. Also, a gram of Solstice™ 1233zd(E) has a lower MIR value than a gram of ethane. Thus, under the Interim Guidance Solstice™ 1233zd(E) is eligible to be exempted from the definition of VOC, on the basis of both mass-based and molar-based MIR.

According to the petitioner, in the foam blowing applications, Solstice™ 1233zd(E) will compete with HFC–245fa, HFC–365mfc and cyclopentane. Solstice™ 1233zd(E) will compete with HFC–245fa and HFC–134a in refrigerant applications and with HCFC–225ca, HCFC–225cb, HFC–43–10mee and methyl chloroform in aerosol solvent applications. These applications have been approved by the EPA's SNAP Program (*see* section III.D).[7] The EPA believes that market penetration by Solstice™ 1233zd(E) is more likely in foam blowing and refrigeration applications than in aerosol solvent applications. Given these known prospects for substitution, it is informative to compare the ozone reactivity metric values for Solstice™ 1233zd(E) to the values for HFC–245fa, HFC–365mfc, cyclopentane, methyl chloroform and HFC–134a, although the Interim Guidance does not contemplate such comparisons among substitutes in every case.[8] Table 2 contains the ozone metrics for Solstice™ 1233zd(E), these five chemicals and ethane. The table shows that Solstice™ 1233zd(E) is lower than cyclopentane on all three reactivity metrics. Thus, it is reasonable to conclude that when Solstice™ 1233zd(E) is substituted for cyclopentane, less ozone will result. Solstice™ 1233zd(E) has higher values on all three metrics than the other compounds listed in Table 2, but it should be noted that the k_{OH} and MIR values for other compounds are extremely low even compared to those of ethane.

TABLE 2—REACTIVITIES OF SOLSTICE™ 1233ZD(E) AND FIVE COMPOUNDS FOR WHICH IT MAY SUBSTITUTE

Compound	k_{OH} (cm³/molecule-sec)	Maximum incremental reactivity (MIR) (g O_3/mole VOC)	Maximum incremental reactivity (MIR) (g O_3/g VOC)
Solstice™ 1233zd(E)	4.40×10^{-13}	5.22	0.040
HFC–245fa	7.24×10^{-15}	0.106	0.0008
HFC–365mfc	7.12×10^{-15}	0.089	0.0006
Cyclopentane	5.02×10^{-12}	167	2.39
Methyl Chloroform	1.24×10^{-14}	0.654	0.0049
HFC–134a	4.59×10^{-15}	0.071	0.0007
Ethane	2.4×10^{-13}	8.4	0.28

Notes:
1. k_{OH} value for cyclopentane is from Carter, 2010 (page 211).
2. k_{OH} value for HFC–245fa is from Carter, 2010 (page 228).
3. k_{OH} value for HFC–365mfc is from Carter, 2010 (page 229).
4. k_{OH} value for methyl chloroform is from Carter, 2010 (page 228).
5. k_{OH} value for HFC–134a is from Carter, 2010 (page 228).
6. Mass-based MIR value (g O_3/g VOC) of cyclopentane is from Carter, 2010 (page 178).
7. Mass-based MIR value of HFC–245fa is from Carter, 2010 (page 202).
8. Mass-based MIR value of HFC–365mfc is from Carter, 2010 (page 202).
9. Mass-based MIR value of methyl chloroform is from Carter, 2010 (page 202).

[6] In this action as in past exemption actions, the EPA is focusing on the MIR under ''averaged conditions.'' Carter also calculated a MIR value of 0.042 g O3/g VOC for Solstice™ 1233zd(E) for the average of all city-specific scenarios, versus the corresponding MIR of 0.264 g O3/g VOC for ethane. There were no individual city-specific scenarios where Solstice™ 1233zd(E) was calculated to have a higher MIR than ethane.

[7] The SNAP program approval refers to Solstice™ 1233zd(E) as a substitute certain ODSs, rather than as a substitute for the currently marketed compounds with which it will compete.

[8] HCFC–225ca and HCFC–225cb are banned as of January 1, 2015, and therefore have not been included in this comparison.

10. Mass-based MIR value of HFC–134a is from Carter, 2010 (page 202).
11. Molar-based MIR (g O_3/mole VOC) values were calculated from the mass-based MIR (g O_3/g VOC) values using the number of moles per gram of the relevant organic compound.

As stated in section IV.C, Solstice™ 1233zd(E) has a very low GWP. Global warming is predicted to exacerbate high ozone concentrations (U.S. EPA, 2009; Jacob and Winner, 2009), so directionally the lower GWP of Solstice™ 1233zd(E) compared to HFC–245fa will also help reduce tropospheric ozone concentrations.

In summary, the EPA believes that Solstice™ 1233zd(E) qualifies as negligibly reactive with respect to its contribution to tropospheric ozone formation.

B. Likelihood of Risk to Human Health or the Environment

Stratospheric Ozone Depletion—The SNAP program review of Solstice™ 1233zd(E) described in section III.D considered available information regarding ozone depletion and concluded that from a stratospheric ozone depletion perspective, the compound is acceptable as a replacement for the ozone-depleting substances CFC–11 and HCFC–123 for use in certain refrigerant applications, a replacement for CFC–11 and HCFC 141b in foam blowing and a replacement for CFC–113, methyl chloroform, HCFC–141b, and HCFC–225ca, HCFC–225cb and blends thereof for use in aerosol solvent applications. Estimates of Solstice™ 1233zd(E)'s potential to deplete the ozone layer found that even with worst case estimates of emissions which assume that this compound would substitute for all compounds it could replace, the impact on global atmospheric ozone abundance would be statistically insignificant. The emissions of Solstice™ 1233zd(E) in its refrigerant application will be limited given it is subject to the venting prohibition under section 608(c)(2) of the CAA and the EPA's implementing regulations codified at 40 CFR 82.154(a)(1). Solstice™ 1233zd(E) has an ozone-depleting potential (ODP) of 0.00024 to 0.00034. This is roughly one order of magnitude higher than the ODPs of HFCs used in substitute refrigerants and foam blowing agents which are considered to have zero ODP, including HFC–134a and HFC–125. Solstice™ 1233zd(E)'s ODP is well below that of CFC–11, HCFC–123 and HCFC–141b (with ODPs ranging from 0.01 to 1.0), the ODSs which it replaces in refrigerants and foam blowing applications. The ODP of Solstice™ 1233zd(E) is comparable to the ODPs of trans-1,2-dichloroethylene and trichloroethylene and an order of magnitude lower than the ODP of perchloroethylene, other substitutes in the aerosol solvents end use that are not regulated as ODSs. Solstice™ 1233zd(E)'s ODP is well below those of methyl chloroform, CFC–113, HCFC–141b, HCFC–225ca and HCFC–225cb (with ODPs ranging from 0.02 to 0.85), the ODSs it replaces in aerosol solvents.

Health and Environmental Risks—As described in section III.C, Solstice™ 1233zd(E) has recently completed a PMN review on January 30, 2012. After considering all relevant data currently available, the EPA was unable to find any unreasonable risks to human health or the environment from the expected use of the substance. Based on this finding, the EPA did not find it necessary to take any actions to prevent unreasonable risk under TSCA.

The SNAP program review of Solstice™ 1233zd(E) described the potential health effects of Solstice™ 1233zd(E) as being common to many refrigerants, including many of those already listed as acceptable under SNAP. Potential health effects of this substitute include serious eye irritation, skin irritation and frostbite. The EPA anticipates that users will be able to meet the manufacturer's recommended workplace exposure limit and address potential health risks by following requirements and recommendations in the material safety data sheet and in any other safety precautions common to the refrigeration and air conditioning industry and the foam blowing industry.

Solstice™ 1233zd(E) is not flammable.

Sulbaek Andersen et al., 2008, states that Solstice™ 1233zd(E) is not expected to undergo wet or dry deposition to an appreciable extent.

C. Global Warming Potential

Solstice™ 1233zd(E) has a 100-yr GWP reported as 4.7 to 7 and an atmospheric lifetime of approximately 26 to 31 days or less. Solstice™ 1233zd(E)'s GWP of 4.7 to 7 is lower than or comparable to that of other acceptable substitutes for ODSs in the same end uses. The notice for the EPA's determination under the SNAP program provides specific GWP comparisons to these other acceptable substitutes. 77 FR 47768, August 10, 2012. Solstice™ 1233zd(E) is expected to compete directly in the foam blowing application market with the ODS-substitutes HFC–245fa (GWP of 1030) and HFC–365mfc (GWP of 794) which have much higher GWPs than that for Solstice™ 1233zd(E). It will also compete with cyclopentane which has a GWP of less than 0.1 (UNEP, 1994) which is lower than for Solstice™ 1233zd(E). Because of the much higher GWPs of HFC–245fa and HFC–365mfc, the net global warming effect of increased use of Solstice™ 1233zd(E) in place of HFC–245fa, HFC–365mfc and cyclopentane will depend on the pattern of substitutions that takes place in the future, but is likely to be advantageous as long as the amounts of displaced HFC–245fa and HFC–365mfc are not much less than the amount of displaced cyclopentane.

D. Conclusions

In summary, the EPA finds that Solstice™ 1233zd(E) qualifies as negligibly reactive with respect to its contribution to tropospheric ozone formation. In addition, we believe that risks not related to tropospheric ozone associated with currently allowed uses of the chemical are acceptable, and that any new or increased risk from potential new uses are adequately addressed by other existing programs and policies, specifically the SNAP program. We also believe that the comparable or lower global warming potential of Solstice™ 1233zd(E) compared to other acceptable substitutes and in particular compared to HFC–245fa, as described in section IV.C, is an additional reason to approve the Solstice™ 1233zd(E) petition given that applying the Interim Guidance itself supports such approval.

V. Direct Final Action

The EPA is responding to the petition by revising its definition of VOC at 40 CFR 51.100(s) to add Solstice™ 1233zd(E) to the list of compounds that are exempt from the regulatory definition of VOC because they are negligibly reactive, on the basis that it is less reactive than ethane on both a mass and a molar MIR basis. If an entity uses or produces any of this compound and is subject to the EPA regulations limiting the use of VOC in a product, limiting the VOC emissions from a facility, or otherwise controlling the use of VOC for purposes related to attaining the ozone NAAQS, then this compound will not be counted as a VOC in determining whether these regulatory obligations have been met. Emissions of this compound will not be considered in determining whether a proposed new or modified source triggers the applicability of Prevention of Significant Deterioration (PSD) requirements, in areas where the PSD program is implemented by the EPA or a delegated state, local or tribal agency. This action may also affect whether this compound is considered a VOC for state regulatory purposes to reduce ozone formation, if a state relies on the EPA's definition of VOC. States are not obligated to exclude from control as a VOC those compounds that the EPA has found to be negligibly reactive. However, no state may take credit for controlling this compound in its ozone control strategy.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993), and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). It does not contain any recordkeeping or reporting requirement.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of this notice on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (*See* 13 CFR 121.); (2) A governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's direct final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 USC 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This direct final rule removes Solstice™ 1233zd(E) from the definition of VOCs and thereby relieves users of the compound from requirements to control emissions of the compound. We have therefore concluded that today's direct final rule will relieve regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local or tribal governments or the private sector. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This direct final rule removes Solstice™ 1233zd(E) from the definition of VOCs and thereby relieves users of the compound from requirements to control emissions of the compound.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This direct final rule removes Solstice™ 1233zd(E) from the definition of VOCs and thereby relieves users from requirements to control emissions of the compound. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It would not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian Tribes, or on the distribution of power and responsibilities between the federal government and Indian Tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866. This action's health and risk assessments are contained in section IV.B. of this preamble and within the docket for this rulemaking. While this direct final rule is not subject to the Executive Order, the EPA has reason to believe that ozone has a disproportionate effect on active children who play outdoors (62 FR 38856; 38859, July 18, 1997). The EPA has not identified any specific studies on whether or to what extent Solstice™ 1233zd(E) may affect children's health.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d), (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through

OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, the EPA has not considered the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629, Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

The EPA has determined that this direct final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on May 16, 2013.

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit Court within 60 days from the date the final action is published in the **Federal Register**. Filing a petition for review by the Administrator of this final action does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review must be final, and shall not postpone the effectiveness of such action. Thus, any petitions for review of this action related to the exemption of Solstice™ 1233zd(E) from the definition of VOC must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

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List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 4, 2013.

Lisa P. Jackson,

Administrator.

For reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

Subpart F—Procedural Requirements

■ 1. The authority citation for Part 51, Subpart F, continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7412, 7413, 7414, 7470–7479, 7501–7508, 7601, and 7602.

§ 51.100 [Amended]

■ 2. Section 51.100 is amended at the end of paragraph (s)(1) introductory text by removing the words ''and perfluorocarbon compounds which fall into these classes:'' and adding in their place a semi-colon and the words ''*trans* 1-chloro-3,3,3-trifluoroprop-1-ene; and perfluorocarbon compounds which fall into these classes:''.

[FR Doc. 2013–03061 Filed 2–14–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 43, 63 and 64

[IB Docket No. 11–80; FCC 12–145]

International Settlements Policy Reform

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission eliminates the International Settlements Policy (ISP) and applies a modified version to Cuba. The Commission amends its rules and procedures to enhance its ability to respond to foreign carriers' anticompetitive behavior in and timely and effective manner. Eliminating the ISP will enable more market-based arrangements between U.S. and foreign carriers on all U.S.-international routes giving U.S. consumers competitive pricing when they make international calls. The Commission also adopts certain limited measures to improve the Commission's ability to protect U.S. consumers from the effects of anticompetitive conduct by foreign carriers.

DATES: Effective March 18, 2013, except for the amendment to § 43.51(d) which contains information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of that rule change.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. The Commission will seek comments from the Office of Management and Budget (OMB), other Federal agencies and the general public on the Paperwork Reduction Act information collection requirements contained herein in a separate notice to be published in **Federal Register**.

FOR FURTHER INFORMATION CONTACT: James Ball or Kimberly Cook, Policy Division, International Bureau, 202–418–1460. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in IB Docket No. 11–80, RM–11322, IB Docket No. 05–254, IB Docket No. 09–10, FCC 12–145, which was adopted on November 29, 2012. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The document may also be downloaded from the Commission's Web site at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–12–145A1.doc*. The complete text may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., in person at 445 12th Street SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 488–5300, via facsimile at (202) 488–5563, or via email at *FCC@BCPIWEB.COM*.

Summary of the Report and Order

1. The Commission finds that the record supports removing the International Settlements Policy (ISP) from the 38 international routes to which it continues to apply, with the exception of Cuba. The market has seen significant competitive growth since the Commission last reviewed the ISP. Further, in today's competitive market, maintaining the ISP has the opposite effect for which it was intended because it now hurts U.S. carriers' ability to negotiate competitive rates with their foreign correspondents. Foreign carriers on ISP routes no longer have the incentive to agree to pay symmetrical rates to U.S. carriers for their U.S.-bound traffic, as required by the ISP, because they can send that traffic to the United States at significantly lower market rates through traffic re-origination arrangements offered by third country foreign carriers on ISP-exempt routes between the United States and those third countries. The Commission believes that removing the ISP from the remaining U.S.-international routes will provide U.S. carriers greater flexibility to negotiate lower settlement rates on those routes. Thus, it removes the ISP from the remaining international routes with the exception of Cuba, to which we continue to apply a limited form of the ISP as well as the benchmarks policy subject to waivers.

2. The Commission believes it is appropriate to continue to apply only part of the ISP to the U.S.-Cuba route. The Commission finds that continuing to apply the proportionate return and symmetric rate prongs of the ISP to the U.S.-Cuba route would likely complicate the resumption of direct telecommunications services on the route because Cuban carriers are able to continue indirect routing of U.S. traffic. Accordingly, the Commission will remove these requirements from this route. The Commission, believes, however, that the nondiscrimination prong of the ISP is essential to assuring that one U.S. carrier is not favored over another once direct service on the U.S.-Cuba route resumes. Therefore, consistent with the guidance from the U.S. Department of State, the Commission will continue to apply the nondiscrimination prong of the ISP to the U.S.-Cuba route. The Commission will also continue to apply its benchmarks policy to direct U.S.-Cuba traffic subject to waiver.

3. Because the Commission will continue to apply the nondiscrimination prong to U.S.-Cuba traffic, it will provide in its rules that the terms and conditions of any operating or other agreement relating to the exchange of services, interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, the allocation of return traffic, or the basis of settlement of traffic balances, entered into by U.S. common carriers authorized pursuant to Part 63 of the Commission's rules to provide facilities-based switched voice service on the U.S.-Cuba route in correspondence with a Cuban carrier that does not qualify for the presumption that it lacks market power in Cuba, shall be identical to the equivalent terms and conditions in the operating agreement of another carrier providing the same or similar service between the United States and Cuba. No operating or other agreement inconsistent with this requirement may become effective unless and until the U.S. carrier obtains a waiver from the Commission. This condition would also be imposed on all section 214 authorizations for direct service to Cuba.

4. Carriers that seek waiver of the nondiscrimination requirement on the U.S.-Cuba route must submit a request to the Commission with a persuasive showing as to the public interest benefits of permitting it to enter into an agreement with a Cuban carrier with market power that contains accounting rates and related arrangements not offered by that Cuban carrier to all other U.S. carriers. Any such request for waiver shall include identification of the Cuban carrier party to the proposed agreement; a copy of the proposed agreement; the present accounting rate (if any); the new accounting rate (including any surcharges); the proposed effective date of the new agreement; a notarized statement by the carrier requesting the waiver that it has informed the Cuban administration that U.S. policy requires that competing U.S. carriers have access to accounting rates negotiated by the filing carrier with a Cuban carrier with market power on a nondiscriminating basis; and a statement as to the public interest

reasons the Commission nevertheless should permit the proposed discriminatory accounting rate or related arrangement to go into effect. The filing carrier shall serve a copy of the waiver request on all other U.S. carriers providing switched voice services to Cuba. Any waiver request will be placed on public notice and coordinated with the U.S. Department of State.

5. Because the Commission has removed the ISP from all U.S.-international routes except for the U.S.-Cuba route as described above, it eliminates 47 CFR 64.1001 and 64.1002 (a)–(c) and (e). The Commission adds a provision in 47 CFR 63.22 to implement its continuing policy goal of preventing discriminatory treatment of U.S. carriers on the Cuba route. The Commission also requires any agreement reached on the U.S.-Cuba route to be consistent with this condition and filed with the Commission. The Commission will consider such an agreement routinely available for public inspection. The Commission amends and retains the requirements of 47 CFR 64.1002(d), relocating it to part 63. This section sets forth procedures for Commission consideration of allegations of anticompetitive conduct on international routes.

6. The Commission will require all U.S. carriers to provide information about any above-benchmark settlement rates on an as-needed basis in connection with an investigation of competition problems on selected routes or review of high consumer rates on either multiple or selected routes. The Commission will require U.S. carriers to provide information on request and give confidential treatment to the information pursuant to its rules. On an as-needed basis, the Commission may require U.S. carriers to file all agreements, amendments and rates with the Commission. The Commission might exercise that authority on our own motion or where the Commission receives a complaint from a carrier or from a consumer with respect to a specific international route. The Commission finds that this approach appropriately balances the Commission's need to have notice of above-benchmark rates to prevent and protect against potential anticompetitive behavior while minimizing the burden on U.S. carriers. Finally, the Commission continues to reserve the right to require the filing of particular contracts when presented with evidence of a violation of the ''No Special Concessions'' rule or of other anticompetitive behavior related to these matters on a particular route.

7. The Commission also adopts certain limited measures to improve the Commission's ability to protect U.S. consumers from the effects of anticompetitive conduct by foreign carriers. The Commission adopts the presumption that partial circuit blockages and threats of circuit blockages, like circuit blockages, constitute anticompetitive behavior. The Commission also adopts additional potential remedies to respond to anticompetitive action following consultation with other U.S. government agencies as appropriate. The Commission determines that the prohibition of increased payments should be remedy used as one of several potential enforcement tools that may be applied based on the facts of each situation. The Commission declines to implement increasing U.S.-inbound rates as a potential remedy and also declines to implement re-imposing the ISP as a potential remedy. The Commission maintains its authority to revoke or place limitations on section 214 authorizations in instances where the carrier or its foreign affiliate is engaging in anticompetitive behavior. The Commission includes the prohibition to carry or terminate traffic as a potential remedy to be used as appropriate in circumstances where it could prevent or minimize anticompetitive behavior on a U.S.-international route. It also maintained full stop payment orders are an appropriate remedy.

8. Paperwork Reduction Act of 1995 Analyses. This document contains modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public, other Federal agencies and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 in a separate notice that will be published in the **Federal Register**. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

Final Regulatory Flexibility Analysis

9. As required by the Regulatory Flexibility Act (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM).[2] The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA.[3] This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Report and Order

10. In recent years there has been increased participation and competition in the U.S. international marketplace, decreased settlement and end-user rates, and growing liberalization and privatization in foreign markets. Because of this increase, the Commission believes that it is an appropriate time to adopt changes to its International Settlements Policy (ISP) and accounting rate policies.

B. Description and Estimate of the Number of Small Entities To Which Rules Will Apply

11. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of entities that will be affected by the rules.[4] The RFA defines ''small entity'' as having the same meaning as the term ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[5] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate to its activities.[6] Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).[7]

12. This Order may directly affect up to approximately 31 facilities-based U.S. international carriers providing IMTS

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.,* has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] International Settlements Policy Reform, Notice of Proposed Rulemaking, IB Docket Nos. 11–80, 05–254, 09–10, RM 11322, 26 FCC Rcd 7233 (2011) (*NPRM*).

[3] *Id.*

[4] 5 U.S.C. 603(b)(3), 604(a)(3).

[5] 5 U.S.C. 601(6).

[6] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to 5 U.S.C 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, established one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the **Federal Register**.''

[7] 15 U.S.C. 632.

traffic. In the 2010 annual traffic and revenue report, 31 facilities-based and facilities-resale carriers reported approximately $4.0 billion in revenues from international message telephone service (IMTS). Of these, three reported IMTS revenues of more than $1 billion, six reported IMTS revenues of more than $100 million, nine reported IMTS revenues of more than $50 million, 19 reported IMTS revenues of more than $10 million, 23 reported IMTS revenues of more than $5 million, and 26 reported IMTS revenues of more than $1 million. Based solely on their IMTS revenues the majority of these carriers would be considered non-small entities under the SBA definition.[8] Neither the Commission nor the SBA has developed a definition of ''small entity'' specifically applicable to these international carriers. The closest applicable definition provides that a small entity is one with 1,500 or fewer employees.[9] We do not have data specifying the number of these carriers that are not independently owned and operated and have fewer than 1,500 employees. Furthermore, because not all agreements between the U.S. and foreign carriers are required to be filed at the Commission, it is difficult to determine how many of these 31 carriers might have agreements with foreign carriers. The Order adopts a wide variety of proposals intended to promote market-based policies and reduce unnecessary regulatory burdens on all facilities-based U.S. international carriers regardless of size.

C. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

13. The Order largely reduces projected reporting, recordkeeping, and other compliance requirements. These changes affect small and large companies equally. In developing the Commission's ISP, benchmarks and international settlement rates policies, the Commission implemented various reporting requirements to monitor possible anticompetitive behavior and protect the public interest. The Order reserves the right to require the filing of particular contracts when presented with evidence of a violation of the ''No Special Concessions'' rule or of other anticompetitive behavior related to these matters on a particular route.

D. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

14. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[10]

15. The changes adopted in this Order are designed to provide the Commission with information to determine whether its existing regulatory regime may inhibit the benefits of lower calling process and greater service innovations to consumers. Because the Order is broad and changes would likely affect only 31 facilities-based carriers, it would be difficult to adopt specific alternatives for the small facilities-based entities. The changes adopted in the Order would benefit all entities, including small entities.

16. The Order does take action that would minimize the economic impact on all entities, including small entities. For example, the Order removes the ISP from certain remaining routes. This action eliminates the burden of seeking prior Commission approval before a carrier could enter into arrangements with foreign carriers. Any changes to our existing policies and rules will expand the ability of all entities, including small entities, to reap the economic benefits of competition. Thus, the Order does not include any exemption for small entities.

E. Report to Congress

17. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the SBREFA.[11] In addition, the Commission will send a copy of the Order, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and the FRFA (or summaries thereof) will also be published in the **Federal Register**.[12]

Congressional Review Act

The Commission will send a copy of this Report & Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

18. *It is ordered* that, pursuant to the authority contained in 47 U.S.C. 151, 152, 154(i), 154(j), 201–205, 208, 211, 214, 303(r), 309 and 403 this Report and Order is *adopted* and the policies, rules, and requirements discussed herein *are adopted* and parts 0, 43 and 64 of the Commission's rules *are amended.*

19. *Is ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of Small Business Administration, in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

20. *Is further ordered* that the policies, rules, and requirements established in this decision shall take effect thirty days after publication in the **Federal Register** except for § 43.51(d) which contains new information collection requirements that require approval by the Office of Management and Budget (OMB) under the PRA. The Federal Communications Commission will publish a document in the **Federal Register** announcing such approval and the relevant effective date.

List of Subjects in 47 CFR Parts 0, 1, 43, 63 and 64

Freedom of information, Administrative practice and procedure, Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Parts 0, 1, 43, 63 and 64 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. Amend § 0.457 by revising paragraph (d)(1)(v) to read as follows:

§ 0.457 Records not routinely available for public inspection.

* * * * *

(d) * * *

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[8] *See* 13 CFR 121.201, NAICS Code at Subsector 517—Telecommunications.

[9] 13 CFR 121.201, NAICS codes 513310 and 513322.

[10] 5 U.S.C. 603(c).

[11] *See* 5 U.S.C. 801(a)(1)(A).

[12] *See* 5 U.S.C. 604(b).

(1) * * *

(v) The rates, terms and conditions in any agreement between a U.S. carrier and a foreign carrier that govern the settlement of U.S.-international traffic, including the method for allocating return traffic, except as otherwise specified by the Commission by order or by the International Bureau under delegated authority. *See, e.g., International Settlements Policy Reform,* IB Docket Nos. 11–80, 05–254, 09–10, RM–11322, Report and Order, FCC 12–145 (rel. Nov. 29, 2012).

* * * * *

PART 1—PRACTICE AND PROCEDURE

■ 3. The authority citation for part 1 continues to read as follows:

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96.

■ 4. Amend § 1.1206 by removing and reserving paragraph (a)(12).

§ 1.1206 Permit-but-disclose proceedings.

(a) * * *

(12) [Reserved]

* * * * *

PART 43—REPORTS OF COMMUNICATION COMMON CARRIERS AND CERTAIN AFFILIATES

■ 5. The authority citation for part 43 continues to read as follows:

Authority: 47 U.S.C. 154; Telecommunications Act of 1996, Pub. L. 104–104, secs. 402(b)(2)(B), (c), 110 Stat. 56 (1996) as amended unless otherwise noted, 47 U.S.C. 211, 219, 220 as amended.

■ 6. Amend § 43.51 by:

■ a. Revising paragraph (a)(1) introductory text and paragraph (d).

■ b. Removing the comma at the end of paragraph (b)(1) and adding ''; or'' in its place.

■ c. Removing '', or'' at the end of paragraph (b)(2) and adding a period in its place.

■ d. Removing paragraphs (b)(3), (e), and (f).

■ e. Removing note 3 and note 4 to § 43.51.

The revisions read as follows:

§ 43.51 Contracts and concessions.

(a)(1) Any communication common carrier described in paragraph (b) of this section must file with the Commission, within thirty (30) days of execution, a copy of each contract, agreement, concession, license, authorization, operating agreement or other arrangement to which it is a party and amendments thereto (collectively hereinafter referred to as ''agreement'' for purposes of this rule) with respect to the following:

* * * * *

(d) Any U.S. carrier, other than a provider of commercial mobile radio services, that is engaged in foreign communications, and enters into an agreement with a foreign carrier, is subject to the Commission's authority to require the U.S. carrier providing service on any U.S.-international routes to file, on an as-needed basis, a copy of each agreement to which it is a party.

* * * * *

PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PROVATE OPERATING AGENCY STATUS

■ 7. The authority citation for part 63 continues to read as follows:

Authority: Sections 1, 4(i), 4(j), 10, 11, 201–205, 214, 218, 403 and 651 of the Commissions Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571, unless otherwise noted.

■ 8. Amend § 63.14 by revising paragraph (c) to read as set forth below, and removing note to paragraph (c):

§ 63.14 Prohibition on agreeing to accept special concessions.

* * * * *

(c) This section shall not apply to the rates, terms and conditions in an agreement between a U.S. carrier and a foreign carrier that govern the settlement of U.S. international traffic, including the method for allocating return traffic.

■ 9. Amend § 63.17 by revising paragraph (b) introductory text to read as follows:

§ 63.17 Special provisions for U.S. international common carriers.

* * * * *

(b) Except as provided in paragraph (b)(4) of this section, a U.S. common carrier, whether a reseller or facilities-based carrier, may engage in ''switched hubbing'' to countries provided the carrier complies with the following conditions:

* * * * *

■ 10. Amend § 63.22 by redesignating paragraph (f) as paragraph (h) and adding new paragraphs (f) and (g) and notes 1 and 2 to § 63.22 as follows:

§ 63.22 Facilities-based international common carriers.

* * * * *

(f) The terms and conditions of any operating or other agreement relating to the exchange of services, interchange or routing of traffic and matters concerning rates, accounting rates, division of tolls, the allocation of return traffic, or the basis of settlement of traffic balances, entered into by U.S. common carriers authorized pursuant to this part to provide facilities-based switched voice service on the U.S.-Cuba route in correspondence with a Cuban carrier that does not qualify for the presumption that it lacks market power in Cuba, shall be identical to the equivalent terms and conditions in the operating agreement of another carrier providing the same or similar service between the United States and Cuba. Carriers may seek waiver of this requirement. *See International Settlements Policy Reform,* Report and Order, IB Docket Nos. 11–80, 05–254, 09–10, RM 11322, FCC 12–145 (rel. November 29, 2012).

(g) A carrier or other party may request Commission intervention on any U.S. international route for which competitive problems are alleged by filing with the International Bureau a petition, pursuant to this section, demonstrating anticompetitive behavior by foreign carriers that is harmful to U.S. customers. The Commission may also act on its own motion. Carriers and other parties filing complaints must support their petitions with evidence, including an affidavit and relevant commercial agreements. The International Bureau will review complaints on a case-by-case basis and take appropriate action on delegated authority pursuant to § 0.261 of this chapter. Interested parties will have 10 days from the date of issuance of a public notice of the petition to file comments or oppositions to such petitions and subsequently 7 days for replies. In the event significant, immediate harm to the public interest is likely to occur that cannot be addressed through *post facto* remedies, the International Bureau may impose temporary requirements on carriers authorized pursuant to § 63.18 of this chapter without prejudice to its findings on such petitions.

* * * * *

Note 1 to § 63.22: For purposes of this section, *foreign carrier* is defined in § 63.09 of this chapter.

Note 2 to § 63.22: For purposes of this section, a *foreign carrier* shall be considered to possess market power if it appears on the Commission's list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points. This list is available on the International

Bureau's World Wide Web site at *http://www.fcc.gov/ib.* The Commission will include on the list of foreign carriers that do not qualify for the presumption that they lack market power in particular foreign points any foreign carrier that has 50 percent or more market share in the international transport or local access markets of a foreign point. A party that seeks to remove such a carrier from the Commission's list bears the burden of submitting information to the Commission sufficient to demonstrate that the foreign carrier lacks 50 percent market share in the international transport and local access markets on the foreign end of the route or that it nevertheless lacks sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market. A party that seeks to add a carrier to the Commission's list bears the burden of submitting information to the Commission sufficient to demonstrate that the foreign carrier has 50 percent or more market share in the international transport or local access markets on the foreign end of the route or that it nevertheless has sufficient market power to affect competition adversely in the U.S. market.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 11. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, unless otherwise noted.

[Subpart J—Removed and Reserved]

■ 12. Remove and reserve subpart J, consisting of §§ 64.1001 and 64.1002.

[FR Doc. 2013–03073 Filed 2–14–13; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 78, No. 32
Friday, February 15, 2013

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1215

RIN 2590–AA51

Production of FHFA Records, Information, and Employee Testimony in Legal Proceedings; Correction

AGENCY: Federal Housing Finance Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the preamble to a proposed rule published in the **Federal Register** of February 8, 2013, regarding Production of FHFA Records, Information, and Employee Testimony in Legal Proceedings.

DATES: The closing date for the comment period in the proposed rule published February 8, 2013, at 78 FR 9336, is April 9, 2013.

FOR FURTHER INFORMATION CONTACT: James P. Jordan, Senior Counsel, 202–649–3075 (not a toll-free number), Federal Housing Finance Center, Constitution Center, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is 800–877–8339.

SUPPLEMENTARY INFORMATION:

Correction

In proposed rule FR Doc. 2013–02908, beginning on page 9336 in the issue of February 8, 2013, make the following correction in the **DATES** section. On page 9336, the **DATES** section should read: ''Comments must be received on or before April 9, 2013.''

Dated: February 12, 2013.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2013–03585 Filed 2–14–13; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–1099; Airspace Docket No. 12–ASW–9]

Proposed Amendment of Class E Airspace; La Pryor Chaparrosa Ranch Airport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at La Pryor, TX. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAP) at Chaparrosa Ranch Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport. Geographic coordinates of the airport would also be updated.

DATES: Comments must be received on or before April 1, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2012–1099/Airspace Docket No. 12–ASW–9, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817–321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2012–1099/Airspace Docket No. 12–ASW–9.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14

CFR), Part 71 by amending Class E airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures at Chaparrosa Ranch Airport, La Pryor, TX. The existing segment would be widened to 8 miles west and 4 miles east of the 339° bearing extending from the current radius to 18 miles north of the airport for the safety and management of IFR operations. The airport's geographic coordinates also would be updated to coincide with the FAA's aeronautical database.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9W, dated August 8, 2012 and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Chaparrosa Ranch Airport, La Pryor, TX.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASW TX E5 La Pryor Chaparrosa Ranch Airport, TX [Amended]

Chaparrosa Ranch Airport, TX
(lat. 28°52′45″ N., long. 99°59′33″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Chaparrosa Ranch Airport, and within 8 miles west and 4 miles east of the 339° bearing from the airport extending from the 6.5-mile radius to 18 miles north of the airport.

Issued in Fort Worth, TX on January 22, 2013.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2013–03568 Filed 2–14–13; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1431; Airspace Docket No. 11–ACE–24]

Proposed Amendment of Class E Airspace; Atwood, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Atwood, KS. Decommissioning of the Atwood non-directional radio beacon (NDB) at Atwood—Rawlins County—City County Airport has made reconfiguration necessary for standard instrument approach procedures and for the safety and management of Instrument Flight Rules (IFR) operations at the airport. Geographic coordinates would also be updated.

DATES: Comments must be received on or before April 1, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–1431/Airspace Docket No. 11–ACE–24, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817–321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–1431/Airspace Docket No. 11–ACE–24.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by modifying Class E airspace extending upward from 700 feet above the surface for standard instrument approach procedures at Atwood—Rawlins County—City County Airport, Atwood, KS. The airspace extension north of the airport would be removed due to the decommissioning of the Atwood NDB and cancellation of the NDB approach. Geographic coordinates would also be updated to coincide with the FAA's aeronautical database. Controlled airspace within the existing 6.5-mile radius is necessary for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9W, dated August 8, 2012 and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend controlled airspace at Atwood-Rawlins County-City County Airport, Atwood, KS.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Atwood, KS [Amended]

Atwood-Rawlins County-City County Airport, KS
(lat. 39°50′25″ N., long. 101°02′33″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Atwood-Rawlins County-City County Airport.

Issued in Fort Worth, TX on January 22, 2013.

David P. Medina,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2013–03556 Filed 2–14–13; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2013–0013]

RIN 1625–AA00

Safety Zone; Mamaroneck Beach and Yacht Club Fireworks, Mamaroneck Harbor, Long Island Sound, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the navigable waters of Long Island Sound in the vicinity of Mamaroneck Harbor for a fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays. This rule is intended to restrict all vessels from a portion of Long Island Sound before, during, and immediately after the fireworks event.

DATES: Comments and related material must be received by the Coast Guard on or before March 18, 2013.

Requests for public meetings must be received by the Coast Guard on or before February 22, 2013.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S.

Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade Kristopher Kesting, Sector NY Waterways Management, U.S. Coast Guard; Telephone (718) 354–4154, Email *Kristopher.R.Kesting@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
COTP Captain of the Port

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number (USCG–2013–0013) in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2013–0013) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES** on or before February 22, 2013. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

This proposed safety zone is necessary to ensure the safety of spectators and vessels from hazards associated with the fireworks display. Based on the inherent hazards associated with fireworks, the Captain of the Port (COTP) New York has determined that fireworks launches in close proximity to water crafts pose a significant risk to public safety and property. The combination of increased number of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, and debris especially burning debris falling on passing or spectator vessels has the potential to result in serious injuries or fatalities. The proposed temporary safety zone will restrict vessel movement in the Long Island Sound around the location of the fireworks launch platform before, during, and after the fireworks display.

C. Discussion of Proposed Rule

Bay Fireworks is sponsoring a fireworks display for the Mamaroneck Beach and Yacht Club on the navigable waters of Long Island Sound in the vicinity of Mamaroneck Harbor, NY. The proposed safety zone is necessary to ensure the safety of spectators and vessels from hazards associated with the fireworks display.

The fireworks display will occur from approximately 8:30 p.m. until approximately 9:15 p.m. In order to coordinate the safe movement of vessels within the area and to ensure that the area is clear of unauthorized persons and vessels before, during, and immediately after the fireworks launch, this zone will be enforced from approximately 8:00 p.m. until approximately 9:30 p.m. on May 11, 2013.

The proposed safety zone will include all navigable waters of Long Island Sound within a 240-yard radius of the fireworks barge located in approximate position 40°56′24.95″ N, 073°43′00.39″ W, approximately 520 yards northeast of Orienta Point, NY. Vessels will still be able to transit the surrounding area and may be authorized to transit through the proposed safety zone with the permission from the COTP. The COTP does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The fireworks barge will also have a sign on its port and starboard side labeled ''FIREWORKS—STAY AWAY.'' The sign will consist of 10″ high by 1.5″

wide red lettering on a white background.

D. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard's enforcement of this proposed safety zone will be of short duration, approximately 90 minutes during the scheduled fireworks event. The proposed safety zone will restrict access to only a small portion of the navigable waterways of Long Island Sound. Vessels will be able to navigate around the proposed safety zone. Furthermore, vessels may be authorized to transit through the proposed safety zone with the permission of the COTP.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This proposed rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a small portion of the Long Island Sound during the effective period.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: This proposed rule would be in effect for only 85 minutes late at night when vessel traffic is low. Vessel traffic could pass safely around the safety zone. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the waterway.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children From Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishment of a temporary safety zone. This rule may be categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and record keeping requirements, waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREA

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01.0013 to read as follows:

§ 165.T01–0013 Safety Zone; Mamaroneck Beach and Yacht Club Fireworks, Mamaroneck Harbor, Long Island Sound, NY

(a) *Regulated Area.* The following area is a temporary safety zone: All navigable waters of Long Island Sound within a 240-yard radius of the fireworks barge located in approximate position 40°56′24.95″ N, 073°43′00.39″ W, in the vicinity of Orienta Point, NY.

(b) *Effective Period.* This rule will be effective from approximately 8:00 p.m. until approximately 9:30 p.m. on May 11, 2013.

(c) *Definitions.* The following definitions apply to this section:

(1) Designated Representative. A ‘‘designated representative’’ is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port Sector New York (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(2) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(d) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23, as well as the following regulations, apply.

(2) No vessels, except for fireworks barge and accompanying vessels, will be allowed to transit the safety zone without the permission of the COTP.

(3) All persons and vessels shall comply with the instructions of the COTP or the designated representative. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(4) Vessel operators desiring to enter or operate within the regulated area shall contact the COTP or the designated representative via VHF channel 16 or 718–354–4353 (Sector New York command center) to obtain permission to do so.

Dated: January 30, 2013.

G.P. Hitchen,

Captain, U.S. Coast Guard, Acting Captain of the Port New York.

[FR Doc. 2013–03551 Filed 2–14–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–HQ–OAR–2012–0393; FRL–9779–4]

RIN 2060–AQ38

Air Quality: Revision to Definition of Volatile Organic Compounds—Exclusion of *trans* 1-chloro-3,3,3-trifluoroprop-1-ene [Solstice™ 1233zd(E)]

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to revise the definition of volatile organic compounds (VOCs) for purposes of preparing state implementation plans (SIPs) to attain the national ambient air quality standards for ozone under title I of the Clean Air Act (CAA). This proposed revision would add *trans* 1-chloro-3,3,3-trifluoroprop-1-ene (also known as Solstice™ 1233zd(E)) to the list of compounds excluded from the definition of VOCs on the basis that this compound makes a negligible contribution to tropospheric ozone formation. In the ‘‘Rules and Regulations’’ section of this **Federal Register**, we are making these same amendments as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: Comments must be received on or before April 1, 2013.

Public Hearing: If anyone contacts the EPA requesting to present oral testimony at a public hearing concerning the proposed regulation by February 25, 2013, we will hold a public hearing on March 4, 2013. If a public hearing is held, it will be held at 10 a.m. at Building C on the EPA campus in Research Triangle Park, NC, or at an alternate site nearby. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the comment period and the public hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2012–0393, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-Docket@epamail.epa.gov,* Attention Docket ID No. EPA–HQ–OAR–2012–0393.
- *Fax:* 202–566–1541, Attention Docket ID No. EPA–HQ–OAR–2012–0393.
- *Mail:* Docket ID No. EPA–HQ–OAR–2012–0393, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue NW., Room: 3334, Mail Code: 6102T, Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2012–0393. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2012–0393. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov,* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Docket ID No. EPA–HQ–OAR–2012–0393, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: David Sanders, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C539–01, Research Triangle Park, NC 27711; telephone: (919) 541–3356; fax number: 919–541–0824; email address: *sanders.dave@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Why is the EPA using a direct final rule?

This proposed action would revise the EPA's definition of VOCs for purposes of preparing SIPs to attain the NAAQS for ozone under title I of the CAA, by adding *trans* 1-chloro-3,3,3-trifluoroprop-1-ene (also known as Solstice™ 1233zd(E)) to the list of compounds excluded from the definition of VOCs on the basis that this compound makes a negligible contribution to tropospheric ozone formation.[1] We are publishing a direct final rule in the ''Rules and Regulations'' section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule. The regulatory text for the proposal is identical to that for the direct final rule published in the ''Rules and Regulations'' section of this **Federal Register**. For further supplementary information, the detailed rationale for the proposal and the regulatory revisions, see the direct final rule published in a separate part of this **Federal Register**.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule, and it will not take effect. We would address all public comments in any subsequent final rule base on this proposed rule. We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this proposal will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this action will be posted on the EPA's Web site *www.epa.gov/ttn/oarpg/new.html.*

C. What should I consider as I prepare my comments for the EPA?

Submitting CBI: Do not submit this information to the EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2012–0393.

D. How can I find information about a possible public hearing?

Public Hearing: If anyone contacts the EPA requesting to present oral testimony at a public hearing concerning the proposed regulation by February 25, 2013, we will hold a public hearing on March 4, 2013. If a public hearing is held, it will be held at 10 a.m. at Building C on the EPA campus in Research Triangle Park, NC, or at an alternate site nearby. Persons interested in presenting oral testimony must contact Pamela Long, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code C504–01, Research Triangle Park, NC 27711; telephone: (919) 541–0641; fax number: 919–541–5509; email address: *long.pam@epa.gov,* no later than February 25, 2013. Persons interested in attending the public hearing if one is held must also call Ms. Long to verify the time, date and location of the hearing. If no one contacts Ms. Long by February 25, 2013 with a request to present oral testimony at the hearing, we will cancel the hearing.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993), and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

[1] *Trans* 1-chloro-3,3,3-trifluoroprop-1-ene will also be marketed by Honeywell under the trade names Solstice™ N12 Refrigerant, Solstice™ Liquid Blowing Agent, Solstice™ LBA, and Solstice™ Performance Fluid.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). It does not contain any recordkeeping or reporting requirement.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this notice on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (*See* 13 CFR 121.); (2) A governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This proposed rule would remove Solstice™ 1233zd(E) from the definition of VOCs and thereby relieves users of the compound from requirements to control emissions of the compound. We have therefore concluded that today's proposed rule will relieve regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local or tribal governments or the private sector. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed rule would remove Solstice™ 1233zd(E) from the definition of VOCs and thereby relieves users of the compound from requirements to control emissions of the compound.

E. Executive Order 13132—Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule would remove Solstice™ 1233zd(E) from the definition of VOCs and thereby relieves users from requirements to control emissions of the compound. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on this proposed action from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It would not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the federal government and Indian Tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule. The EPA specifically solicits additional comment on this proposed action from tribal officials

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866. This action's health and risk assessments are contained in the direct final rule publishing in the ''Rules and Regulations'' section of this **Federal Register** and within the docket for this rulemaking. While this proposed rule is not subject to the Executive Order, the EPA has reason to believe that ozone has a disproportionate effect on active children who play outdoors (62 FR 38856; 38859, July 18, 1997). The EPA has not identified any specific studies on whether or to what extent Solstice™ 1233zd(E) may affect children's health.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d), (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, the EPA has not considered the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629, Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 4, 2013.

Lisa P. Jackson,

Administrator.

[FR Doc. 2013–03063 Filed 2–14–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0954; FRL–9781–8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Motor Vehicle Emissions Budgets for the Pennsylvania Counties in the Philadelphia-Wilmington, PA-NJ-DE 1997 Fine Particulate Matter Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania (Pennsylvania). This proposed revision consists of an update to the SIP-approved Motor Vehicle Emissions Budgets (MVEBs) for the Pennsylvania counties in the Philadelphia-Wilmington, PA-NJ-DE 1997 fine particulate matter ($PM_{2.5}$) Nonattainment Area (hereafter referred to as the Philadelphia Area) to reflect the use of the most recent version of the Motor Vehicle Emission Simulator model (MOVES). Those counties are: Philadelphia, Montgomery, Delaware, Chester, and Bucks Counties. This rulemaking proposes to approve the MVEBs and thereby make them available for transportation conformity purposes. EPA determined on May 16, 2012 that the Philadelphia Area attained the 1997 $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) by the applicable attainment date. Approval of this SIP revision will not interfere with the Philadelphia Area's ability to continue to attain the 1997 $PM_{2.5}$ NAAQS. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: Written comments must be received on or before March 18, 2013.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2012–0954 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2012–0954, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2012–0954. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Asrah Khadr, (215) 814–2071, or by email at khadr.asrah@epa.gov.

SUPPLEMENTARY INFORMATION: EPA determined on May 16, 2012 (77 FR 28782) that the Philadelphia Area attained the 1997 $PM_{2.5}$ NAAQS by the applicable attainment date, April 5, 2010. On November 6, 2012, the Pennsylvania DEP submitted a draft SIP revision to update the SIP-approved MVEBs for the Philadelphia Area to reflect the use of the most recent version of the MOVES model. On January 29, 2013, Pennsylvania DEP submitted its formal, final SIP revision to update the SIP-approved MVEBs for the Philadelphia Area.

I. Background

The currently SIP-approved MVEBs for the Philadelphia Area were developed using the Highway Mobile Source Emission Factor Model (MOBILE6.2). On March 2, 2010 (75 FR 9411), EPA published a notice of availability for the MOVES2010 model for use in developing MVEBs for SIPs and for conducting transportation conformity analyses. EPA commenced a two year grace period after which time the MOVES2010 model would have to be used for transportation conformity purposes. The two year grace period was scheduled to end on March 2, 2012. On February 27, 2012 (77 FR 11394), EPA published a final rule extending the grace period for one more year to March 2, 2013 to ensure adequate time for affected parties to have the capacity to use the MOVES model to develop or update the applicable MVEBs in SIPs and to conduct conformity analyses. On September 8, 2010, EPA released MOVES2010a, which is a minor update to MOVES2010 (hereafter referred to as the MOVES model), and which is used by Pennsylvania in this SIP revision.

By requesting that EPA approve its SIP revision to update the SIP-approved MVEBs of the Philadelphia Area to reflect the use of the MOVES model, Pennsylvania DEP is seeking to ensure that the applicable SIP-approved MVEBs are MOVES-based for use in transportation conformity analyses. The transportation conformity rules can be found in 40 CFR 93, Subpart A. One of the requirements for transportation conformity is that any transportation plan, transportation improvement program (TIP) or transportation project not already part of a conforming TIP must conform to the MVEBs in the applicable SIP. In order for the MVEBs in a SIP to be used to determine conformity of a TIP or a transportation project, the MVEBs must be deemed adequate and/or approved as a SIP revision. The requirements for adequacy are set forth in 40 CFR 93.118(e)(4)(i)–(vi). EPA is proposing to approve the updated MVEBs of the Philadelphia Area as a SIP revision because EPA has thoroughly reviewed the SIP revision and determined that those MVEBs meet the adequacy requirements and have been correctly re-calculated to reflect the use of the MOVES model. Upon final SIP approval, the updated MVEBs will become the applicable MVEBs for use in performing transportation conformity analyses.

II. Summary of the SIP Revision

On November 6, 2012, Pennsylvania DEP submitted to EPA a draft SIP revision which updates the Philadelphia Area's MVEBs to reflect the use of the MOVES model. On January 29, 2013, Pennsylvania DEP submitted its formal, final SIP revision to update the Philadelphia Area's MVEBs to reflect the use of the MOVES model. The MVEBs are for $PM_{2.5}$ and nitrogen oxides (NO_X). The attainment demonstration documented that NO_X is the only significant precursor from on-road sources to the formation of $PM_{2.5}$ in the Philadelphia Area. The MVEBs were previously developed using MOBILE6.2 for the year 2009. The previously developed MVEBs for $PM_{2.5}$ and NO_X for the Philadelphia Area were approved as part of EPA's approval of Pennsylvania's 1997 $PM_{2.5}$ attainment plan on August 28, 2012 (77 FR 51930). A summary of the updated MOVES-based MVEBs and previously approved MOBILE6.2-based MVEBs for 2009 is provided in Table 1: Summary of MVEBs; the emissions for each pollutant are provided in tons per year (tpy). Also presented in Table 1 is a comparison between the 2002 base year inventory, which was produced by MOBILE6.2 and updated with MOVES, and the 2009 MVEBs. Even though there is an emissions increase in the MOVES-based MVEBs, the increase is not due to an increase in emissions from mobile sources. The increase is due to the fact that the MOVES model provides more accurate emissions estimates than MOBILE6.2 rather than growth that had not been anticipated in the attainment demonstration or changes to any control measures. Even though the MVEBs as calculated using MOVES result in a higher estimate of emissions, the MVEBs are consistent with requirements for attainment in the Philadelphia Area. This is because EPA determined on May 16, 2012 (77 FR 28782) that the Philadelphia Area attained the 1997 $PM_{2.5}$ NAAQS by the applicable attainment date and the area continues to attain the 1997 $PM_{2.5}$ NAAQS. The design values for the years 2007–2009, 2008–2010, and 2009–2011 respectively are as follows: 13.7 micrograms per cubic meter ($\mu g/m^3$), 13.8 $\mu g/m^3$, and 13.7 $\mu g/m^3$. All of the design values are below the 1997 $PM_{2.5}$ NAAQS which is 15 $\mu g/m^3$. Also, preliminary 2012 data show that the Philadelphia Area continues to attain the standard. Therefore, this update to the SIP-approved MVEBs to reflect the use of the MOVES model does not interfere with the Philadelphia Area's ability to continue to be in attainment of the 1997 $PM_{2.5}$ NAAQS. A detailed summary of EPA's review and rationale for proposing to approve this SIP revision may be found in the Technical Support Document (TSD) prepared in support of this proposed approval and is available on line at *http://www.regulations.gov,* Docket number EPA–R03–OAR–2012–0954.

TABLE 1—SUMMARY OF MVEBS

Model	MOBILE6.2		MOVES2010a	
Year	2002	2009	2002	2009
$PM_{2.5}$ (tpy)	1032.8	699.1	2,904.60	1,907.5
NO_X (tpy)	63,475.9	36,317.7	90,879.00	57,218.3

III. Proposed Action

EPA is proposing to approve Pennsylvania DEP's SIP revision request from January 29, 2013 to update the SIP-approved MVEBs in the Philadelphia Area to reflect the use of the MOVES model. EPA is proposing approval because this SIP revision will allow the Philadelphia Area to continue to be in attainment of the 1997 $PM_{2.5}$ NAAQS, and our in depth review of the SIP revision leads EPA to conclude that the updated MVEBs meet the adequacy requirements set forth in 40 CFR 93.118(e)(4)(i)–(vi), and the updated MVEBs have been correctly calculated to reflect the use of the MOVES model. Upon final approval, these updated MVEBs will be both adequate and SIP-approved for purposes of transportation conformity.

EPA issued conformity regulations to implement the 1997 $PM_{2.5}$ NAAQS in July 2004 and May 2005. *See* 69 FR 40004 (July 1, 2004) and 70 FR 24280 (May 6, 2005). Those actions were not part of the final rule recently remanded to EPA by the Court of Appeals for the District of Columbia in *NRDC* v. *EPA,* No. 08–1250 (January 4, 2013), in which the Court remanded to EPA the implementation rule for the $PM_{2.5}$ NAAQS because it concluded that EPA must implement that NAAQS pursuant to the PM-specific implementation provisions of Subpart 4 of Part D of Title I of the CAA, rather than solely under the general provisions of Subpart 1. That decision does not affect EPA's proposed approval of the Philadelphia Area MVEBs. First, as noted above, EPA's conformity rule implementing the 1997 $PM_{2.5}$ NAAQS was a separate action from the overall $PM_{2.5}$ implementation rule addressed by the Court and was not considered or disturbed by the decision. Therefore, the conformity regulations were not at issue in *NRDC v. EPA.*[1] In addition, the Philadelphia Area is currently attaining the 1997 $PM_{2.5}$ NAAQS and EPA has approved Pennsylvania DEP's attainment demonstration for the Philadelphia Area, and the revised MVEBs simply update the budget calculations using MOVES, as explained above. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule concerning Pennsylvania's January 29, 2013 request to update the applicable MVEBs of the Philadelphia Area does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 7, 2013.

W. C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2013–03594 Filed 2–14–13; 8:45 am]

BILLING CODE 6560–50–P

[1] The 2004 rulemaking action addressed most of the transportation conformity requirements that apply in $PM_{2.5}$ nonattainment and maintenance areas. The 2005 conformity rule included provisions addressing treatment of $PM_{2.5}$ precursors in MVEBs. *See* 40 CFR 93.102(b)(2). While none of these provisions were challenged in the NRDC case, EPA also notes that the court declined to address challenges to EPA's presumptions regarding $PM_{2.5}$ precursors in the $PM_{2.5}$ implementation rule. *NRDC* v. *EPA,* slip op. at 18 n. 10.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–HQ–OAR–2012–0233; FRL–9781–3]

EPA Responses to State and Tribal 2010 Sulfur Dioxide Designation Recommendations: Notice of Availability and Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and public comment period.

SUMMARY: Notice is hereby given that the EPA has posted its responses to certain state and tribal designation recommendations for the 2010 Sulfur Dioxide (SO_2) National Ambient Air Quality Standards (NAAQS) on its Internet Web site. The EPA invites the public to review and provide input on its responses during the comment period specified in the **DATES** section. The EPA sent its responses directly to the states and tribes on or about February 7, 2013. These responses focus on designating as ''nonattainment'' certain areas of the country where air monitoring data from 2009–2011 indicate violations of the 2010 SO_2 NAAQS. The EPA intends to make final the designation determinations for the areas of the country addressed by these responses in June 2013.

DATES: Comments must be received on or before March 18, 2013. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the comment period.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2012–0233, by one of the following methods:

- *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov. Attention Docket ID No. EPA–HQ–OAR–2012–0233.*
- *Fax:* 202–566–9744. *Attention Docket ID No. EPA–HQ–OAR–2012–0233.*
- *Mail:* Air Docket, *Attention Docket ID No. EPA–HQ–OAR–2012–0233,* Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, 1301 Constitution Avenue NW., Room 3334, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2012–0233. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be confidential business information or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the

Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA is unable to read your comment and cannot contact you for clarification due to technical difficulties, the EPA may not be able to consider your input. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section II of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For general questions concerning this action, please contact Rhonda Wright, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Planning Division, C539–04, Research Triangle Park, NC 27711, telephone (919) 541–1087, email at *wright.rhonda@epa.gov.* For questions regarding areas in EPA Region 1, please contact Donald Dahl, U.S. EPA, telephone (617) 918–1657, email at *dahl.donald@epa.gov.* For questions regarding areas in EPA Region 2, please contact Kenneth Fradkin, U.S. EPA, telephone (212) 637–3702, email at *fradkin.kenneth@epa.gov.* For questions regarding areas in EPA Region 3, please contact Irene Shandruk, U.S. EPA, telephone (215) 814–2166, email at *shandruk.irene@epa.gov.* For questions regarding areas in EPA Region 4, please contact Lynorae Benjamin, U.S. EPA, telephone (404) 562–9040, email at *benjamin.lynorae@epa.gov.* For questions regarding areas in EPA Region 5, please contact John Summerhays, U.S. EPA, telephone (312) 886–6067, email at *summerhays.john@epa.gov.* For questions regarding areas in EPA Region 6, please contact Dayana Medina, U.S. EPA, telephone (214) 665–7241, email at *medina.dayana@epa.gov.* For questions regarding areas in EPA Region 7, please contact Larry Gonzalez, U.S. EPA, telephone (913) 551–7041, email at *gonzalez.larry@epa.gov.* For questions regarding areas in EPA Region 8, please contact Crystal Ostigaard, U.S. EPA, telephone (303) 312–6602, email at *ostigaard.crystal@epa.gov.* For questions regarding areas in EPA Region 9, please contact John Kelly, U.S. EPA, telephone (415) 947–4151, email at *kelly.johnj@epa.gov.* For questions regarding areas in EPA Region 10, please contact Steve Body, U.S. EPA, telephone (206) 553–0782, email at *body.steve@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

On June 2, 2010, the EPA Administrator signed a notice of final rulemaking that revised the primary SO_2 NAAQS (75 FR 35520, published on June 22, 2010) after review of the existing two primary SO_2 standards promulgated on April 30, 1971 (36 FR 8187). The EPA established the revised primary SO_2 NAAQS at 75 parts per billion (ppb) which is attained when the 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations does not exceed 75 ppb.

The process for designating areas following promulgation of a new or revised NAAQS is contained in the Clean Air Act (CAA) section 107(d) (42 U.S.C. 7407). After promulgation of a new or revised NAAQS, each governor or tribal leader has an opportunity to recommend air quality designations, including the appropriate boundaries for nonattainment areas, to the EPA. The EPA considers these recommendations as part of its duty to promulgate the formal area designations and boundaries for the new or revised NAAQS. By no later than 120 days prior to promulgating designations, the EPA is required to notify states and tribes of any intended modifications to an area designation or boundary recommendation that the EPA deems necessary.

On or around February 7, 2013, the EPA notified states and tribes of its intended designation of certain specific areas as nonattainment for the 2010 SO_2 NAAQS. States and tribes now have an opportunity to demonstrate why they believe an intended modification by the EPA regarding those specified areas may be inappropriate. The EPA encouraged states and tribes to provide comments and additional information for consideration by the EPA in finalizing designations for these specified areas. The EPA plans to make final designation decisions for these areas for the 2010 SO_2 NAAQS in June 2013.

The purpose of this notice is to solicit input from interested parties other than states and tribes on the EPA's recent responses regarding these areas to the state and tribal designation recommendations for the 2010 SO_2 NAAQS. These responses, and their supporting technical analyses, can be found on the EPA's Internet Web site at *http://www.epa.gov/so2designations* and also in the public docket for SO_2 designations at Docket ID No. EPA–HQ–OAR–2012–0233. CAA section 107(d) provides a process for air quality designations that involves recommendations by states and tribes to the EPA and responses from the EPA to those parties, prior to the EPA promulgating final area designations and boundaries. The EPA is not required under CAA section 107(d) to seek public comment during the designation process, but is electing to do so for these areas under the 2010 SO_2 NAAQS in order to gather additional information for the EPA to consider before making final designations for the specific areas addressed in the EPA's recent responses to states and tribes. The EPA invites public input on its responses to states and tribes regarding these areas during the 30-day comment period provided in this notice. In order to receive full consideration, input from the public must be submitted by March 18, 2013. At this time, the EPA is not asking for public comments on other areas for which states and tribes have submitted designation recommendations, beyond those to which the EPA has provided the responses that are the subject of this proposed action. This notice and opportunity for public comment does not affect any rights or obligations of any state, tribe or the EPA which might otherwise exist pursuant to CAA section 107(d).

Please refer to the **ADDRESSES** section above in this document for specific instructions on submitting comments and locating relevant public documents.

In establishing nonattainment area boundaries, the EPA is required to identify the area that does not meet the 2010 SO_2 NAAQS and any nearby area that is contributing to the area that does not meet that standard. We are particularly interested in receiving comments, supported by relevant information, if you believe that a specific geographic area that the EPA is proposing to identify as a nonattainment area should not be categorized by the CAA section 107(d) criteria as nonattainment, or if you believe that a specific nearby area not proposed by the EPA to be identified as contributing to a nonattainment area should in fact be categorized as contributing to nonattainment using the CAA section 107(d) criteria. Please be as specific as possible in supporting your views.

- Describe any assumptions and provide any technical information and/or data that you used.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible.
- Make sure to provide your input by the comment period deadline identified.

At this point, the EPA is prepared to proceed with identifying as ''nonattainment'' most areas in locations where available monitoring data from 2009–2011 indicate violations of the 1-hour SO_2 standard. The EPA intends to complete designations for these nonattainment areas in June 2013. The EPA is not yet prepared to respond to state and tribal area designation recommendations, or seek public input thereon, for other areas, and intends to address those areas in a subsequent round or multiple rounds of responses and designations. Additional information on the EPA's intended approach for addressing designations for all areas can be found on the EPA's SO_2 implementation Web site at *http://www.epa.gov//airquality/sulfurdioxide/implementation.html.* Please be advised that, in this action, the EPA is not proposing as a regulatory action and is not soliciting public comments on the intended approach for these other areas, regarding either designations or implementation. The EPA expects its final designations regarding the specific areas addressed in this action to be limited to those areas and any areas that are found to be contributing to ambient air quality in those areas.

To date, the EPA has identified 30 areas as not meeting the 2010 SO_2 NAAQS based on the most recent certified air quality monitoring data from 2009–2011, and is intending to designate most of these areas as nonattainment.

II. Instructions for Submitting Public Comments and Internet Web Site for Rulemaking Information

A. What should I consider as I prepare my comments for the EPA?

1. *Submitting CBI.* Do not submit this information to the EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, U.S. EPA, Office of Air Quality Planning and Standards, Mail Code C404–02, Research Triangle Park, NC 27711, telephone (919) 541–0880, email at *morales.roberto@epa.gov,* Attention Docket ID No. EPA–HQ–OAR–2012–0233.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

B. Where can I find additional information for this rulemaking?

The EPA has also established a Web site for this rulemaking at *http://www.epa.gov/so2designations.* The Web site includes the EPA's state and tribal designation recommendations, information supporting the EPA's preliminary designation decisions, as well as the rulemaking actions and other related information that the public may find useful.

Dated: February 7, 2013.

Jennifer Noonan Edmonds,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 2013–03593 Filed 2–14–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2013–0023; FRL–9378–4]

Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petitions and request for comment.

SUMMARY: This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before March 18, 2013.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: A contact person, with telephone number and email address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed at the end of the pesticide petition summary of interest.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), (21 U.S.C. 346a), requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available online at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerances

1. *PP 2E8107.* (EPA–HQ–OPP–2012–0899). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201W., Princeton, NJ 08540, requests to establish tolerances in 40 CFR part 180 for residues of the insecticide fenpropathrin, alpha-cyano-3-phenoxybenzyl 2,2,3,3-tetramethylcyclopropanecarboxylate, in or on barley, grain at 0.04 parts per million (ppm); barley, hay at 3.0 ppm; barley, straw at 2.0 ppm; vegetable, fruiting, group 8–10 at 1.0 ppm; fruit, citrus, group 10–10 at 2.0 ppm; fruit, pome, group 11–10 at 5.0 ppm; bushberry subgroup 13–07B at 3.0 ppm; fruit, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 5.0 ppm; and berry, low growing, subgroup 13–07G at 2.0 ppm. Adequate analytical methodology is available to detect and quantify fenpropathrin at residue levels in numerous matrices. The methods use solvent extraction and partition and/or column chromatography clean-up steps, followed by separation and quantitation using capillary gas liquid chromatography (GLC) with flame ionization detector (FID). Contact: Andrew Ertman, (703) 308–9367, email address: *ertman.andrew@epa.gov.*

2. *PP 2E8119.* (EPA–HQ–OPP–2012–0949). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201W., Princeton, NJ 08540, requests to establish tolerances in 40 CFR part 180 for residues of the fungicide triflumizole, [1-[1-((4-chloro-2-(trifluoromethyl) phenyl)imino)-2propoxyethyl]-1*H*-imidazole] in or on tomato at 1.5 ppm; fruit, pome, group 11–10 at 0.5 ppm; fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 2.5 ppm; and berry, low growing, subgroup, 13–07G at 2.0 ppm. The analytical method is suitable for analyzing crops for residues of triflumizole and its aniline containing metabolites at the proposed tolerance levels. Residue levels of triflumizole are converted to FA–1–1 by acidic and alkaline reflux, followed by distillation. Residues are then extracted and subjected to solid phase extraction (SPE) purification. Detection and quantitation are conducted by gas chromatograph equipped with nitrogen phosphorus detector (GC/NPD), electron capture detector (ECD) or mass spectrometry detection (MSD). Contact: Andrew Ertman, (703) 308–9367, email address: *ertman.andrew@epa.gov.*

3. *PP 2E8125.* (EPA–HQ–OPP–2013–0014). Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, requests to establish tolerances in 40 CFR part 180 for residues of the herbicide indaziflam, (*N*-[(1*R,* 2*S*)-2,3-dihydro-2,6-dimethyl-1*H*-inden-1-yl-1,3,5-triazine-2,4-diamine]-6-(1-fluoroethyl)) and its fluoroethyl-indaziflam metabolite, each expressed as the parent compound, in or on banana at 0.01 ppm; coffee at 0.01 ppm; and palm oil at 0.03 ppm. Indaziflam, residues are quantified in raw agricultural commodities by high pressure liquid chromatography/triple stage quadrupole mass spectrometry (LC/MS/MS) using the stable isotopically labeled analytes as internal standards. Contact: Maggie Rudick, (703) 347–0257, email address: *rudick.maggie@epa.gov.*

4. *PP 2F8055.* (EPA–HQ–OPP–2013–0010). KIM–C1, LLC, 2547 West Shaw Avenue, Suite 116, Fresno, CA 93711, requests to establish temporary tolerances in 40 CFR part 180 for residues of the plant growth regulator forchlorfenuron, *N*-(2-chloro-4-pyridinyl-*N'*-phenylurea, in or on almond; cherry, sweet; fig; pear; pistachio; plum; prune at 0.01 ppm; and the processed commodity almond, hulls at 0.15 ppm. The visible ultraviolet (UV) detector and mass spectrophotometer (MS) detector are used to measure and evaluate the chemical forchlorfenuron. Contact: Marcel Howard, (703) 305–6784, email address: *howard.marcel@epa.gov.*

5. *PP 2F8086.* (EPA–HQ–OPP–2012–0919). Dow AgroSciences (DAS), LLC, 9330 Zionsville Road, Indianapolis, IN 46268, requests to establish tolerances in 40 CFR part 180 for residues of the herbicide halauxifen-methyl, including its metabolites and degradates, in or on the commodities listed below. Compliance with the tolerance levels specified is to be determined by measuring the combined residues of halauxifen-methyl (Methyl 4-amino-3-chloro-6-(4-chloro-2-fluoro-3-methoxyphenyl)pyridine-2-carboxylate) and halauxifen (4-amino-3-chloro-6-(4-chloro-2-fluoro-3-methoxyphenyl) pyridine-2-carboxylic acid) expressed as halauxifen-methyl (parent) equivalents, in or on barley, grain at 0.01 ppm; barley, hay at 0.01 ppm; barley, straw at 0.01 ppm; cattle, fat at 0.01 ppm; cattle, meat at 0.01 ppm; cattle, meat byproducts at 0.01 ppm; goat, fat at 0.01 ppm; goat, meat at 0.01 ppm; goat, meat byproducts at 0.01 ppm; horse, fat at 0.01 ppm; horse, meat at 0.01 ppm; horse, meat byproducts at 0.01 ppm; milk at 0.01 ppm; sheep, fat at 0.01 ppm; sheep, meat at 0.01 ppm; sheep, meat byproducts at 0.01 ppm; wheat, forage at 0.5 ppm; wheat, grain at 0.01 ppm; wheat, hay at 0.04 ppm; wheat, straw at 0.015 ppm. The residue profile of halauxifen-methyl and halauxifen is adequately understood and an acceptable analytical method is available for enforcement purposes. The DAS analytical method study number 110004 outlining the ''Method Validation for the Determination of Residues of Halauxifen-methyl Ester, and Halauxifen in Agricultural Commodities, and Wheat Processed Products using Offline Solid-Phase Extraction, and Liquid Chromatography with Mass Spectrometry Detection'' was validated on a variety of plant matrices. Contact: Maggie Rudick, (703) 347–0257, email address: *rudick.maggie@epa.gov.*

6. *PP 2F8104.* (EPA–HQ–OPP–2013–0011). KIM–C1, LLC, 2547 West Shaw Avenue, Suite 116, Fresno, CA 93711, requests to establish tolerances in 40 CFR part 180 for residues of the plant growth regulator forchlorfenuron, *N*-(2-chloro-4-pyridinyl-*N'*-phenylurea, in or on almond; cherry, sweet; fig; pear; pistachio; plum; and prune at 0.04 ppm and the processed commodity almond, hulls, at 0.15 ppm. The UV detector and MS detector are used to measure and evaluate the chemical forchlorfenuron. Contact: Marcel Howard, (703) 305–6784, email address: *howard.marcel@epa.gov.*

7. *PP 2F8120.* (EPA–HQ–OPP–2013–0008). Dow AgroSciences, 9330 Zionsville Road, Indianapolis, IN 46268, requests to establish tolerances in 40 CFR part 180 for combined residues of the aminopyralid, (XDE–750: 4-amino-3,6-dichloropyridine-2-carboxylic acid) and its glucose conjugate, expressed as total parent, in or on fish—shellfish, mollusc at 0.01 ppm; fish—shellfish, crustacean at 0.01 ppm; fish—freshwater finfish at 0.04 ppm. Adequate analytical methods for enforcement purposes are available to monitor residues of aminopyralid in fish and shellfish. The analytical method GRM 07.08 uses liquid chromatography and positive ion electrospray tandem spectrometry (LC/MS/MS). Contact: Bethany Benbow, (703) 347–8072, email address: *benbow.bethany@epa.gov.*

8. *PP 2F8135.* (EPA–HQ–OPP–2013–0051). Syngenta Crop Protection, LLC., P.O. Box 18300, Greensboro, NC 27419–8300, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide propiconazole, 1-[[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl] methyl]-1*H*-1,2,4-triazole, and its metabolites determined as 2,4,-dichlorobenzoic acid and expressed as parent compound, in or on rapeseed subgroup 20A at 0.3 ppm. The metabolism data in plants and animals suggest that analytical methods to detect either the phenyl or the triazole ring would be appropriate for the measurement of residues. However, because of the natural occurrence of compounds that interfere with the measurement of triazoles, methods designed to detect this moiety have been proven unreliable and unacceptable. Conversely, conversion of phenyl moiety to 2,4-dichlorobenzoic acid (DCBA) has proven to be satisfactory for all agricultural products analyzed to date. Analytical methods AG–626 and AG–454A were developed for the determination of residues of propiconazole and its metabolites containing the DCBA moiety. Analytical method AG–626 has been accepted and published by EPA as the tolerance enforcement method for crops. Contact: Erin Malone, (703) 347–0253, email address: *malone.erin@epa.gov.*

Amended Tolerances

1. *PP 2E8107.* (EPA–HQ–OPP–2012–0899). Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201W., Princeton, NJ 08540, requests to amend the tolerances in 40 CFR 180.466 for residues of the insecticide fenpropathrin, alpha-cyano-3-phenoxybenzyl 2,2,3,3-tetramethylcyclopropane-carboxylate, by removing the established tolerances in or on the following commodities and crop groups: Vegetable, fruiting, group 8; fruit, citrus, group 10; fruit, pome, group 11; bushberry subgroup 13B; Juneberry; salal; grape; and strawberry, upon approval of the proposed tolerances listed under ''New Tolerance'' for *PP 2E8107.* Contact: Andrew Ertman, (703) 308–9367, email address: *ertman.andrew@epa.gov.*

2. *PP 2F8129.* (EPA–HQ–OPP–2013–0015). BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528, requests to amend 40 CFR 180.649 by amending tolerances for residues of saflufenacil, including its metabolites and degradates, in or on the raw agricultural commodities rice straw at 0.30 ppm. In addition, the current commodity definition, ''Grain, cereal, forage, fodder and straw group 16'' would be revised to ''Grain, cereal, forage, fodder and straw group 16 (except rice straw)''. Compliance with the tolerances levels is to be determined by measuring only the sum of saflufenacil, 2-chloro-5-[3,6-dihydro-3-methyl-2,6-dioxo-4-(trifluoromethyl)-1(2*H*)-pyrimidinyl]-4-fluoro-*N*-[[methyl(1-methylethyl) amino] sulfonyl]benzamide, and its metabolites *N*-[2-chloro-5-(2,6-dioxo-4-

(trifluoromethyl)-3,6-dihydro-1(2*H*)-pyrimidinyl)-4-fluorobenzoyl]-*N*′-isopropyl sulfamide and *N*-[4-chloro-2-fluoro-5-((([(isopropylamino)sulfonyl] amino)carbonyl) phenyl]urea, calculated as the stoichiometric equivalent of saflufenacil, in or on the commodities. Adequate enforcement methodology (liquid chromatography/mass spectrometry/mass spectrometry (LCMS/MS) methods D0603/02 (plants) and L0073/01 (livestock)) is available to enforce the tolerance expression. Contact: Bethany Benbow, (703) 347–8072, email address: *benbow.bethany@epa.gov.*

New Tolerance Exemptions

1. *PP IN–10524.* (EPA–HQ–OPP–2012–0908). Ecolab, Inc., 370 N. Wabasha Street, St. Paul, MN 55102, requests to establish an exemption from the requirement of a tolerance for residues of Sorbitan, mono-9-octadecenoate, poly(oxy-1,2-ethanediyl) derivs., (*Z*)- (CAS No. 9005–65–6) when used as a pesticide inert ingredient in antimicrobial pesticide formulations applied to food-contact surfaces in public eating places, dairy processing equipment, and food processing equipment, and utensils in accordance with 40 CFR 180.940(a). The petitioner believes no analytical method is needed because it is not applicable to this inert ingredient petition. Contact: Lisa Austin, (703) 305–7894, email address: *austin.lisa@epa.gov.*

2. *PP IN–10527.* (EPA–HQ–OPP–2013–0003). Ecolab, Inc., 370 N. Wabasha Street, St. Paul, MN 55102, requests to establish an exemption from the requirement of a tolerance for residues of FD&C Green No. 3, Disodium salt, (CAS No. 2353–45–9) when used as a pesticide inert ingredient in antimicrobial pesticide formulations applied to food-contact surfaces in public eating places, dairy processing equipment, and food processing equipment, and utensils in accordance with 40 CFR 180.940(a). The petitioner believes no analytical method is needed because it is not applicable to this inert ingredient petition. Contact: Elizabeth Fertich, (703) 347–8560, email address: *fertich.elizabeth@epa.gov.*

3. *PP IN–10540.* (EPA–HQ–OPP–2013–0043). AgroFresh, Inc., 727 Norristown Road, Spring House, PA 19477–0904, requests to establish an exemption from the requirement of a tolerance for residues of Styrene-ethylene-propylene block copolymer (CAS No. 108388–87–0), number average molecular weight greater than 100,000 daltons in or on all raw agricultural commodities under 40 CFR 180.960 when used as a suspension agent in agricultural formulations. The petitioner believes no analytical method is needed based on the fact that this information is generally not required when all criteria for polymer exemption are met and when petitioning for an exemption from the requirements of a tolerance without any numerical limitations. Contact: David Lieu, (703) 305–0079, email address: *lieu.david@epa.gov.*

4. *PP 2E8040.* (EPA–HQ–OPP–2013–0057). Advanced Polymer Technology, 109 Conica Lane, P.O. Box 160, Harmony, PA 16037, requests to establish an exemption from the requirement of a tolerance for residues of castor oil, polymer with adipic acid, linoleic acid, oleic acid, and ricinoleic acid, (CAS No. 1357486–09–9) 3,748 amu under 40 CFR 180.960 when used as an inert ingredient in pesticide formulations as a solubilizer without limitations. Advanced Polymer Technology is petitioning that castor oil, polymer with adipic acid, linoleic acid, oleic acid and ricinoleic acid be exempt from the requirement of a tolerance based upon the definition of a low-risk polymer under 40 CFR 723.250. Therefore, an analytical method to determine residues on treated crops is not relevant. Contact: David Lieu, (703) 305–0079, email address: *lieu.david@epa.gov.*

List of Subjects in 40 CFR Part 180

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 7, 2013.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2013–03600 Filed 2–14–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73

[ET Docket No. 13–26 and GN 12–268; DA 13–138]

Office of Engineering and Technology Seeks Comment on Updated OET–69 Software

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The FCC's Office of Engineering and Technology (OET) announced the release of new software to perform interference analyses using the methodology described in its Bulletin No. 69 (OET–69). This software, called *TVStudy,* provides analysis of coverage and interference of full-service digital and Class A television stations. The Commission plans to use this new software in connection with the proposed broadcast television spectrum incentive auction (incentive auction). OET seeks comment on the software generally, as well as the identification of any errors, unexpected behaviors, or anomalous results produced in running the software. In addition, OET solicits comment on the implementation of various analytical elements in the software that are not specifically addressed in OET–69.

DATES: Comments must be filed on or before March 21, 2013 and reply comments must be filed on or before April 5, 2013.

FOR FURTHER INFORMATION CONTACT: Robert Weller, Office of Engineering and Technology, (202) 418–7397, email: *Robert.Weller@fcc.gov*, TTY (202) 418–2989.

ADDRESSES: You may submit comments, identified by ET Docket No. 13–26 and GN Docket No. 12–268, by any of the following methods:

- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Mail:* Robert Weller, Office of Engineering and Technology, Room 7–A134, Federal Communications Commission, 445 12th SW., Washington, DC 20554.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *fcc504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the public Notice, see the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION: This is a summary of the Public Notice ET Docket No. 13–26 and GN Docket No. 12–268, DA 13–138 released February 4, 2013. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room, CY–B402, Washington, DC

20554. The full text may also be downloaded at: *www.fcc.gov.*

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

• *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*

• *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Summary of Public Notice

The FCC's Office of Engineering and Technology (OET) announced the release of new software to perform interference analyses using the methodology described in its Bulletin No. 69 (OET–69). This software, called *TVStudy,* provides analysis of coverage and interference of full-service digital and Class A television stations. The Commission plans to use this new software in connection with the proposed broadcast television spectrum incentive auction (incentive auction). OET seeks comment on the software generally, as well as the identification of any errors, unexpected behaviors, or anomalous results produced in running the software. In addition, OET solicits comment on the implementation of various analytical elements in the software that are not specifically addressed in OET–69.

Background

The Commission developed the software that is currently used to implement OET–69 to support the DTV transition, and it has subsequently been used to analyze applications to modify the DTV Table of Channel Allotments. As such, the software programs developed by the FCC for those purposes are based fundamentally on source code and data from the 1990s and earlier. Since that time, some of the underlying datasets have evolved or have been replaced. In addition, parties have gained sufficient experience to have offered FCC staff informal feedback on the existing programs' relative strengths and weaknesses.

It is with these matters in mind that we have developed the *TVStudy* software. The new software operates on modern computer systems, and it runs much faster, provides greater accuracy in modeling and analysis, and is easier to use and more versatile than the existing software. In addition, the *TVStudy* software will allow us to perform the types of analyses that are needed to support the proposed incentive auction.

An important component of the proposed incentive auction is the repacking of broadcast television stations, including the potential reassignment of stations to new operating channels. The Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act) requires the Commission to ''make all reasonable efforts to preserve, as of the date of the enactment of this Act, the coverage area and population served of each broadcast television licensee, as determined using the methodology described in OET Bulletin 69 of the Office of Engineering and Technology.'' OET–69 describes a methodology that divides the area within a digital television station's noise-limited coverage contour into approximately rectangular ''grid cells,'' and then evaluates these cells for coverage and, where present, interference. The Commission's *Incentive Auction NPRM,* See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, *Notice of Proposed Rulemaking,* FCC 12–118, Docket No. 12–268, 27 FCC Rcd. 12357 (2012) *(Incentive Auction NPRM).* Available at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db1002/FCC-12-118A1.pdf* proposes to define the ''coverage area'' of full-power stations as the geographic area within a station's noise-limited contour where its signal strength is predicted to exceed the noise-limited service level, both levels calculated on an F(50,90) basis. Similarly, the *Incentive Auction NPRM* proposes to define the ''coverage area'' for Class A stations as the geographic area within a station's protected contour where its signal strength is predicted to exceed the protected service level, both levels calculated on an F(50,90) basis.

The Incentive Auction NPRM also proposes to define the ''population served'' by full-power stations as the population within a station's noise-limited contour where its signal strength is predicted to exceed the noise-limited service level on an F(50,90) basis and is not subject to predicted interference from other stations, using the protection ratios specified in OET–69 and the rules. Similarly, the *Incentive Auction NPRM* proposes to define the ''population served'' by Class A stations as the population within a station's protected contour where its signal strength is predicted to exceed the protected service level on an F(50,90) basis and is not subject to predicted interference from other stations, using the protection ratios specified in OET–69 and the rules.

OET–69 defines certain parameter values for programmers to use when developing the software to implement OET–69's methodology. In particular, Table 4 of OET–69 lists parameter values used by the Fortran Code for the Longley-Rice (L–R) radio signal propagation model used in the implementing software, Tables 5A and 5B list the D/U ratios to be used in predicting interference, Table 6 describes the performance of the assumed receiving antennas, and Table 8 describes the elevation-plane performance of the assumed transmitting antennas. The foregoing is not an exhaustive list; OET–69 provides additional definitions and guidance. OET–69 does not, however, specify all of the parameters and methods required when developing software to implement OET–69's methodology. The choices made in implementing the methodology of OET–69 can produce different results, and such differences can affect a station's coverage area and population served. By making the new *TVStudy* software as well as reference copies of the various databases necessary to run that software available to the public, we provide a means for implementing the OET–69 methodology that ensures consistency in the results obtained by the Commission and interested parties.

TVStudy Software

The new *TVStudy* software is designed for making rapid coverage and interference calculations involving many stations and provides highly-detailed outputs. It is intuitive in its operation and rapidly produces useful results. It has been developed in two parts: (1) A graphical user interface (implemented in Java), used to establish the parameters of the study and which draws data from appropriate databases; and (2) an analysis engine (implemented in C), which makes the necessary calculations to establish coverage and interference. The outputs include both summaries of area and population by station, and detailed signal level predictions by cell.

We are interested in feedback that discusses the capabilities of the *TVStudy* software to support the incentive auction and to implement whatever decisions are made in the rulemaking proceeding. For example, one of the options discussed in the *Incentive Auction NPRM* requires identifying specific populations presently subject to interference so that new interference is not created. As a practical matter, such an approach requires maintaining a database of interference status at the cell level. The present software implementing OET–69 that the Commission uses for processing applications for new TV stations and modifications to existing stations does not support creation of such a database. The present software was designed for processing individual applications rather than the concurrent study of complete, nationwide assignments. We also seek comment on the new software generally as a tool for analyzing the service area coverage, population served, and interference received by broadcast television stations.

In developing the *TVStudy* software, we have identified various parameter choices consistent with but not specified in OET–69 that we believe are necessary for improved accuracy in our modeling and analysis. We incorporated ''soft-switches'' into the *TVStudy* software to permit the user to evaluate the effects of the different choices. We note that the different parameter choices may yield results for both coverage and interference different from legacy versions of software that have been used in the past.

In conducting the proposed incentive auction, an important objective is that we use software with improved accuracy and that makes use of the best available data to compute estimates of the coverage area and population served of each broadcast television licensee consistent with the provisions of the Spectrum Act. To that end, we solicit feedback from stakeholders, experts, and others on the implementation of the *TVStudy* software. Specifically, we discuss below and invite comment in the following areas:

- Population data
- Terrain data
- Treatment of inaccurate data in FCC database
- Treatment of antenna beam tilt
- Calculation of depression angles
- Level of precision of geographic coordinates
- Establishment of calculation (cell) grid
- Treatment of internal (Longley-Rice) warnings

Population Data. Population coverage in the original DTV Table of Allotments was calculated using data from the 1990 U.S. Census. According to the U.S. Census, the population of the United States increased by about 24 percent between 1990 and 2010, and the distribution of population has also changed. Because the use of 1990 Census data in the present OET–69 software is unlikely to produce an accurate depiction of present-day DTV station population coverage, the *TVStudy* software is designed to use 2010 U.S. Census data.

Terrain Data. Three-arcsecond digital terrain data are used in the present OET–69 software that we used to develop the original DTV Table of Allotments. This means that land elevations are reported every three seconds of geographic latitude and longitude (about every 300 feet). The three-arcsecond database was produced primarily by automatically scanning and interpolating large-scale (such as 1:250,000) paper maps, which often used relatively coarse elevation contours. A number of versions of the three-arcsecond terrain database were released by various agencies, some of which contained errors. Moreover, the three-arcsecond terrain database is no longer being revised, maintained, or supported by the U.S. Geological Survey. A new one-arcsecond terrain database, which has greater resolution (elevation points are spaced about every 100 feet), has replaced the old three-arcsecond terrain database. Additionally, the one-arcsecond terrain database is derived from smaller-scale (*e.g.* 1:24,000) topographic maps with more granular elevation data, and the method for extracting elevation data from those maps has been improved. Because continued use of an unsupported terrain database is likely to lead to obsolescence and potentially inaccurate results, the *TVStudy* software is designed to use one-arcsecond terrain data.

Treatment of Inaccurate Data in FCC Database. We recognize that there may be instances where the information entered into the FCC's broadcast station database (CDBS) may not be fully accurate. Examples may include:

- Negative values for beam tilt
- Swapped values for mechanical beam tilt and orientation
- Missing maximum values for directional antenna patterns
- Missing or incorrect directional antenna flags
- ERP value entered in dBk instead of kilowatts

These sorts of inaccuracies can lead to incorrect or nonsensical results when used in a computer program to predict coverage and interference. We are not proposing to modify the information in the underlying CBDS database. However, we seek comment on what methods we should use to detect information that may be inaccurate and what correction methods we should incorporate into our use of that information.

Treatment of Antenna Beam Tilt. All DTV stations operate directionally in the elevation plane. That is, the transmitting antenna is engineered to focus energy toward populated areas while minimizing energy radiated skyward. To accomplish this, most transmitting antennas are tilted downward, usually uniformly (electrically) but sometimes non-uniformly (mechanically), or both. The actual amount of tilt, if any, is contained in the CDBS record for each station. The present software used to implement OET–69 uses elevation patterns with a fixed electrical beam tilt (*e.g.,* 0.75° for full-power stations operating on UHF channels), and in the development of the original DTV Table of Allotments, the actual amount of tilt given in CDBS was ignored. As a result of ignoring the actual beam tilt, the direction of main beam radiation used to project coverage in the present software may be incorrect, which can effectively cause it to ''miss'' the population being served. We believe that a better practice in implementing OET–69 would be to use the value for electrical downtilt specified in CDBS to correct the generic elevation pattern such that the main beam is at the angle specified in CDBS rather than using a fixed value. Because sufficient information is typically not available to correctly project the antenna patterns of stations having mechanical beam tilt, we do not propose to use mechanical beam tilt in OET–69 calculations.

Calculation of Depression Angles. The depression angle is the vertical angle between the horizontal (at the location of the DTV transmitting antenna) and the location of the receive site under study (cell centroid). An error in the present software used to implement OET–69 and to develop the original DTV Table of Allotments caused this angle to be incorrectly calculated based on the antenna height above ground, rather than the height above mean sea level. This error can cause the radiated power toward the cell under study to be incorrectly calculated, particularly for stations that have antennas atop tall mountains (as opposed to tall towers). The *TVStudy* software is designed to avoid causing this error.

Precision of Geographic Coordinates. The fundamental unit of the U.S. Census is the Census Block, which specifies locations to a precision of 0.0000001° (about 0.0004 seconds) of latitude and longitude. Earlier versions of software implementing OET–69 rounded or truncated this location data to the nearest second, discarding some three orders of precision. This action often causes the centroid locations of cells under study to be shifted. While the original reason for this reduction in precision are unknown, we believe that it may have been related to computational limitations at the time of development. At this time, there appears to be no reason to intentionally reduce numerical precision and we believe that full-precision location data should be used in the *TVStudy* software.

Establishment of Calculation (cell) Grid. The present OET–69 software is designed to establish calculation grids that are for the most part unique to each station considered. This approach requires that all desired and undesired signal levels be calculated for each cell of each station studied and results in cell-level data that cannot be directly compared between different potential channel allotments and/or stations. Another approach is to establish a single, global calculation grid, common to all stations. Such a global approach results in data that can be used to directly compare interference impacts at the cell level, and also speeds calculations since the study grid only needs to be established one time. The *TVStudy* software is designed to generate and use a global calculation grid.

Treatment of Internal (Longley-Rice) Warnings. The propagation algorithm underlying OET–69 is the Irregular Terrain Model (ITM), also known as Longley-Rice (or simply L–R). It is based in part on actual measurements of path loss made by the Department of Commerce over different terrain profiles. Although the measurement data collected were used to create generalized computational models of different types of terrain profiles, not every single terrain profile possible was represented. In particular, terrain profiles lying outside the range of collected data still produce results, but those results are ‘‘flagged’’ as being ‘‘unusable or dubious.’’

The software used to develop the original DTV Table of Allotments treated cells having such ‘‘flags’’ (whether from desired or interfering stations) as having coverage. This determination results in areas where we have no real information about predicted coverage or interference. Such cells are assumed to have coverage, even if neighboring cells do not. This treatment of ‘‘flagged’’ results implemented the Commission's decision that assumption of service is appropriate where the Longley-Rice propagation model indicates that service calculations may be dubious or unreliable. Comparisons with other propagation models suggest that the ‘‘flagged’’ results are typically not unreasonable.

We note that while this approach was taken for purposes of implementing OET–69, a different approach was taken in implementing OET Bulletins 72 and 73 (OET–72 and OET–73, respectively) dealing with the availability of TV service for purposes of the Satellite Home Viewer Act and subsequent legislation. In those cases, the L–R propagation model is used differently and for different purposes. Specifically, OET–72 and OET–73 use the L–R model to estimate whether a TV station's signal is receivable at an individual location (a viewer's home), whereas OET–69 estimates a station's signal coverage, population served and interference received over the entire geographic area it serves. With regard to OET–72 and OET–73, the Commission found that ignoring the appearance of so-called ‘‘error codes’’ and accepting the calculated field strength value was appropriate for determining eligibility for satellite delivery of network programming at individual locations.

We ask whether we should to continue to assume coverage in areas that have flagged results in implementing the Commission's decision that assumption of service is appropriate where the Longley-Rice propagation model indicates that service calculations may be dubious or unreliable. If not, we ask what assumptions should be made relative to coverage and population served under such conditions to more effectively implement the Commission's decision.

Availability of Developmental Software and Data

The Commission is making available its developmental *TVStudy* software and the data required to run it on its Web site at: *http://data.fcc.gov/download/incentive-auctions/OET–69/.*

Installation and operating instructions are included as separate files.

The software was developed on an Apple iMac, but it is expected that the source code can be compiled on other Unix-like platforms (*e.g.* Linux). Compatibility of the C source-code with Microsoft Windows-based compilers is not guaranteed, but only minor modification would be expected. The Java code, which was developed in Java version 1.6, is expected to be platform independent. In addition to the source code, a fully-compiled version of the software is supplied for use on Apple computers running OS10.6 or higher. The software also requires certain MySQL client libraries, which can be obtained by installing MySQL Community Server (available at no cost from Oracle). To ensure compatibility, MySQL Community Server version 5.529 is recommended.

Parties seeking to evaluate the *TVStudy* software will also need various data files for terrain and population. Some of the necessary data files are quite large and so have been archived using TAR and GZip (collectively TGZ) and encoded using PAR2 to facilitate error detection and correction. The necessary data files for population and terrain are supplied at the URL given above, together with a reference copy of CDBS for television stations as of February 22, 2012.

Federal Communications Commission.

Julius P. Knapp,

Chief, Office of Engineering and Technology.

[FR Doc. 2013–03486 Filed 2–14–13; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 78, No. 32

Friday, February 15, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Notice of Public Meetings of Committees of the Administrative Conference of the United States

AGENCY: Administrative Conference of the United States.

ACTION: Notice of public meetings.

SUMMARY: Notice is hereby given of eleven public meetings of the Committee on Adjudication, Committee on Judicial Review, Committee on Regulation, and Committee on Rulemaking of the Assembly of the Administrative Conference of the United States. At these meetings, the committees will consider reports by Conference consultants and work on preparing recommendations. These meetings will be open to the public.

DATES: Committee on Adjudication: Wednesday, March 6, 2013 from 2:00 p.m. to 5:00 p.m.; Monday, April 8, 2013 from 2:00 p.m. to 5:00 p.m.; and Tuesday, April 30, 2013 from 2:00 p.m. to 5:00 p.m. Committee on Judicial Review: Tuesday, March 19, 2013 from 2:00 p.m. to 5:00 p.m.; Wednesday, April 3, 2013 from 2:00 p.m. to 5:00 p.m.; and Monday, April 22, 2013 from 2:00 p.m. to 5:00 p.m. Committee on Regulation: Monday, March 4, 2013, from 1:00 p.m. to 4:00 p.m.; Tuesday, April 2, 2013 from 1:00 p.m. to 4:00 p.m.; and Monday, April 29, 2013 from 1:00 p.m. to 4:00 p.m. Committee on Rulemaking: Monday, March 25, 2013 from 2:00 p.m. to 5:00 p.m. and Tuesday, April 23, 2013 from 9:30 a.m. to 12:30 p.m. Please note that the meetings may adjourn early, or, in the case of second or third meetings of respective committees, may be cancelled, if all business has been completed. Meeting updates will be posted on the Conference's Web site (*www.acus.gov*).

ADDRESSES: The meetings will be held at 1120 20th Street NW., Suite 702 South, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Amber Williams (Committee on Adjudication), *awilliams@acus.gov;* Stephanie Tatham (Committee on Judicial Review), *statham@acus.gov;* Reeve Bull (Committee on Regulation), *rbull@acus.gov;* or Emily Bremer (Committee on Rulemaking), *ebremer@acus.gov;* Designated Federal Officers, Administrative Conference of the United States, 1120 20th Street NW., Suite 706 South, Washington, DC 20036; Telephone 202–480–2080.

SUPPLEMENTARY INFORMATION: Additional information about the committee meetings, the nature of the projects and related materials, how to attend (including information about remote access and obtaining special accommodations for persons with disabilities), can be found on the ''Research Projects'' and ''Meetings & Events'' sections of the Conference's Web site (*www.acus.gov*).

Agendas: The committees will meet to consider reports by Conference consultants on current projects and prepare recommendations for consideration by the Assembly.

Committee on Adjudication: The Committee on Adjudication will meet to consider a draft report and recommendations on social security disability adjudication. The report, prepared by Professors Harold Krent and Scott Morris, presents findings and recommendations based on legal and empirical analysis of the Social Security Administration's adjudication of Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) claims.

Committee on Judicial Review: The Committee on Judicial Review will meet to consider a draft report prepared by Leland Beck on the composition and compilation of administrative records prepared by federal agencies for use in informal agency regulatory proceedings and, if agency decisionmaking is challenged, for the purpose of review by federal courts. The committee will also consider draft recommendations based on this report.

Committee on Regulation: The Committee on Regulation will meet to discuss two projects. First, the committee will consider a revised report by Professor Wendy Wagner examining the use of science by administrative agencies, as well as a set of proposed recommendations, based in part on her work, which aim to enhance the transparency and integrity of agencies' scientific factfinding. The committees will also consider a draft report and recommendations related to benefit-cost analysis at independent regulatory agencies. The draft report, prepared by Curtis Copeland, chronicles the work of independent agencies to assess the benefits and costs related to their rulemakings and highlights certain practices related to economic analysis for consideration by these agencies.

Committee on Rulemaking: The Committee on Rulemaking will meet to consider a draft report and recommendations on the policy and legal issues implicated by agency use of social media to support rulemaking. The Conference's consultant for this project is Professor Michael Herz.

Public Participation: The Conference welcomes the public to attend committee meetings, subject to space limitations, and will make every effort to accommodate persons with disabilities. Persons wishing to attend in person are asked to RSVP online not later than two business days before the meeting. To RSVP, click on ''Meetings & Events'' on the main page of the Conference's Web site, and then click on the ''RSVP'' button for the appropriate committee meeting. The meetings will also be webcast live on the Conference's Web site and may be viewed by clicking the ''View Meetings Live'' button on the main page.

Written Comments: Persons who wish to submit comments related to these projects may do so by submitting an electronic statement through the Conference's Web site or by mail addressed to the appropriate committee at the Conference's office address listed above. To submit an electronic comment, click on ''Meetings & Events'' on the main page of the Conference's Web site, then click on the appropriate committee meeting, and select the ''Submit a Comment'' button.

Dated: February 11, 2013.

Shawne C. McGibbon,

General Counsel.

[FR Doc. 2013–03518 Filed 2–14–13; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 11, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Special Nutrition Program Operations Study—Year 2.

OMB Control Number: 0584–0562.

Summary of Collections: The objective of the Special Nutrition Program Operations Study (SNPOS) is to collect timely data on policies, administrative, and operational issues on the Child Nutrition Programs. The ultimate goal of the study is to analyze these data and provide input for new legislation on Child Nutrition (CN) Programs as well as to provide pertinent technical assistance and training to program implementation staff. This study is necessary to implement Sec. 28(a)(1) of the Richard B. Russell National School Lunch Act. This legislation directs the U.S. Department of Agriculture to carry out annual national performance assessments of the School Breakfast Program and the National School Lunch Program.

Need and Use of the Information: The purpose of the study is to implement a modular data collection system and collect routine data on specific aspects of the child nutrition program, specifically on the program characteristics, administration, and operation of CN programs. The finding from this study survey will be used to identify program operational and policy issues, and topic for technical assistance and training. The information will be collected from a nationally representative sample of School Food Authorities Directors, State Child Nutrition Directors and School Food Service Managers.

Description of Respondents: State, Local, or Tribal Government; Not-for-profit institutions.

Number of Respondents: 2,316.

Frequency of Responses: Reporting; Other (One time) .

Total Burden Hours: 5,094.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–03541 Filed 2–14–13; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 11, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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Agricultural Research Service

Title: Patent License Application.

OMB Control Number: 0518–0003.

Summary of Collection: Public Law 96–517, HR 209 (Technology Transfer Commercialization Act of 2000), and 37 CFR Part 404 requires Federal agencies to use the patent system to promote the utilization of inventions arising from federally supported research and provide the authority to grant patent licenses. 37 CFR 404.8 specifies the information which must be submitted by a patent license applicant to the Federal agency having custody of a patent.

Need and Use of the Information: The Agricultural Research Service (ARS) will collect identifying information on the applicant, identifying information for the business, and a detailed description for development and/or marketing of the invention using form AD–761. The information collected is used to determine whether the applicant has both a complete and sufficient plan for developing and marketing the invention and the necessary manufacturing, marketing, technical, and financial resources to carry out the submitted plan.

Description of Respondents: Business or other for profit; Not-for-profit institutions; Individuals or households.

Number of Respondents: 75.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 225.

Agricultural Research Service

Title: Peer Review Related Forms for the Office of Scientific Quality Review.

OMB Control Number: 0518–0028.

Summary of Collection: The Office of Scientific Quality Review (OSQR) oversees peer review of Agricultural Research Service (ARS) research plans in response to Congressional mandate in the Agricultural Research Extension, and Education Reform Act of 1998 (Pub. L. 105–185, Section 103d). The ARS peer-review panels are scientists who review current scientific research projects.

Need and Use of the Information: ARS will collect the following information: Confidentiality agreement, panelist information, peer review of an ARS research project, critique of ARS research project, panelist expense report, and panelist invoice. The information is used to manage the travel and stipend payments to panel reviewers and provide well-organized feedback to ARS's researchers about their projects. If information were not collected, ARS would not meet the administrative or legislative requirements of the Peer Review Process as mandated by Public Law 105–185; Section 103(d).

Description of Respondents: Individuals or households.

Number of Respondents: 230.

Frequency of Responses: Reporting: Quarterly; Weekly; Annually.

Total Burden Hours: 3,057.

Agricultural Research Service

Title: ARS Animal Health National Program Assessment Survey Form.

OMB Control Number: 0518–0042.

Summary of Collection: The Agricultural Research Service (ARS) is charged with extending the Nation's scientific knowledge with research projects in agriculture, human nutrition, food safety, natural resources, the environment, and other topics affecting the Nation. Research in the Agency is conducted through coordinated National Programs on a five year cycle. The cycle ensures that ARS research meets OMB's Research and Development Investment Criteria and other external requirements, including the Research Title of the Farm Bill, and the Government Performance and results Act of 1993 (GPRA). The ARS National Program 103 Animal Health (NP103) runs in a five year research cycle and is required to conduct a national program assessment to gather customer, stakeholder, and partner input to the next program cycle.

Need and Use of the Information: The proposed assessment instrument will enable ARS to ascertain the level of customer and stakeholder satisfaction with the quality, relevance, and performance of its Animal Health research program. The information collected is also necessary to feed into the goals of the Program's next five year cycle. Failure to collect input from our customers on the performance and impact of our research program would significantly inhibit the relevance and credibility of the research conducted at ARS.

Description of Respondents: Individuals or Households.

Number of Respondents: 400.

Frequency of Responses: Reporting: Other (5 years).

Total Burden Hours: 100.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–03543 Filed 2–14–13; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 11, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by March 18, 2013 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Cold Storage.

OMB Control Number: 0535–0001.

Summary of Collection: The primary objective of the National Agricultural Statistics Service (NASS) is to prepare and issue State and national estimates of crop and livestock production, value and disposition. The monthly Cold Storage Survey provides information on national supplies of food in refrigerated storage facilities. A biennial survey of refrigerated warehouses is also conducted to provide a benchmark of the capacity available for refrigerated storage of the nation's food supply. The data will be collected under the authority of 7 U.S.C. 2204(a). This statute specifies ''The Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain * * * by the collection of statistics * * * and shall distribute them among agriculturists.''

Need and Use of the Information: USDA agencies such as the World Agricultural Outlook Board, Economic Research Service, and Agricultural Marketing Service use this information from the Cold Storage report in setting and administering government commodity programs and in supply and demand analysis. Included in the report are stocks of pork bellies, frozen orange juice concentrate, butter, and cheese which are traded on the Chicago Board of Trade. The timing and frequency of the surveys have evolved to meet the needs of producers, facilities, agribusinesses, and government agencies.

Description of Respondents: Business or other for-profit.

Number of Respondents: 1,700.

Frequency of Responses: Reporting: Monthly; Biennially.

Total Burden Hours: 4,173.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–03537 Filed 2–14–13; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 11, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Utilities Service

Title: Broadband Initiatives Program.

OMB Control Number: 0572–0142.

Summary of Collection: The American Recovery and Reinvestment Act of 2009 (Recovery Act) appropriated $2.5 billion of budget authority for establishing the Broadband Initiatives Program (BIP). The Rural Utilities Service (RUS) established the BIP which may extend loans, grants, and loan/grant combinations to facilitate broadband deployment in rural areas.

Need and Use of the Information: Successful application award recipients will execute loan/grant documents prepared by the Agency. Each recipient and each contractor engaged by the recipient must provide the total amount of Recovery Act funds received and that were expended or obligated to projects or activities. Recipients and contractor must also provide the name, description, evaluation of the completion status and an estimate of the number of jobs created and the number of jobs retained by the project or activity. Recipients of funding will be required to submit an annual CPA Audit report; adopt a Generally Accepted Accounting Principles System of Accounts and develop and maintain an index of records. Without the requested information, RUS could not determine whether applicants meet the requirements that the Recovery Act establishes for BIP financing.

Description of Respondents: Business or other for-profit.

Number of Respondents: 225.

Frequency of Responses: Recordkeeping; Reporting: Quarterly; Annually.

Total Burden Hours: 12,000.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–03536 Filed 2–14–13; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. AMS–FV–12–0061; FV12–981–1]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision of a currently approved information collection for Almonds Grown in California, M.O. No. 981.

DATES: Comments on this notice must be received by April 16, 2013.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Weiya Zeng, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Room 1406–S, Washington, DC 20250–0237; Telephone: (202) 690–3870, Fax: (202) 720–8938, or Email: *weiya.zeng@ams.usda.gov.*

Small businesses may request information on this notice by contacting Jeffrey Smutny, Assistant to the Director, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Room 1406–S, Washington, DC 20250–0237; Telephone (202) 720–9922, Fax: (202) 720–8938; or Email: *jeffrey.smutny@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Almonds Grown in California, Marketing Order No. 981.

OMB Number: 0581–0242.

Expiration Date of Approval: August 31, 2013.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674), to provide the respondents the type of service they request, and to administer the California almond marketing order (order) (7 CFR part 981), which has been operating since 1950.

The order and its rules and regulations authorize the Almond Board of California (Board), the agency responsible for local administration of the order, to require handlers and other certain entities to submit information.

In September 2007, a mandatory program was implemented under the order to help reduce the potential for Salmonella in almonds. The Board has developed forms as a means for persons to file required information with the Board relating to the treatment of almonds to reduce the potential for Salmonella. Almond handlers are required to submit annual treatment plans to the Board and inspection agency regarding how they plan to treat their almonds to reduce the potential for Salmonella. Entities interested in being almond process authorities that validate technologies are required to submit an application to the Board on ABC Form No. 51, ''Application for Process Authority for Almonds.'' Manufacturers in the United States, Canada, and Mexico interested in being approved to accept untreated almonds, provided they agree to treat the almonds themselves under the Board's Direct Verifiable (DV) program are required to submit an application to the Board on ABC Form No. 52, ''Application for Direct Verifiable (DV) Program for Further Processing of Untreated Almonds.'' Entities interested in being approved DV user auditors are required to submit an application to the Board on ABC Form No. 53, ''Application for Direct Verifiable (DV) Program Auditors.'' To ensure compliance with the mandatory program, entities are required to use either an on-site or audit based verification program and annually submit a treatment plan to the Board on ABC Form No. 54, ''Handler Treatment Plan.''

The information collected is used only by authorized representatives of USDA, including AMS, Fruit and Vegetable Program's regional and headquarters' staff, and authorized employees and agents of the Board. Authorized Board employees, agents, and the industry are the primary users of the information, and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 13.77 hours per response.

Respondents: Almond handlers; persons or organizations that would like to qualify to be Board-approved process authorities that validate treatments and technologies; manufacturers who would like to qualify to participate in the Board's DV program; and entities that would like to qualify as auditors under the DV program.

Estimated Number of Respondents: 175.

Estimated Number of Responses per Respondent: 1.74.

Estimated Total Annual Burden on Respondents: 4,200 hours.

Comments are invited on: (1) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on those who respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference this docket number and the appropriate marketing order and be sent to the USDA in care of the Docket Clerk at the address above. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: February 11, 2013.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2013–03484 Filed 2–14–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document Number AMS–NOP–12–0070; NOP–12–17]

Notice of Meeting of the National Organic Standards Board (NOSB)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, (5 U.S.C. App.), the Agricultural Marketing Service (AMS) is announcing an upcoming meeting of the National Organic Standards Board (NOSB). Written public comments are invited in advance of the meeting, and the meeting will include scheduled time for oral comments from the public.

DATES: The meeting will be held April 9–11, 2013, from 8 a.m. to 6 p.m. each day. The deadline to submit written public comments and sign up for oral public comments is Tuesday, March 19, 2013.

ADDRESSES: The meeting will take place at the Hilton Portland and Executive Tower, 921 SW Sixth Avenue, Portland, Oregon 97204. Information and instructions pertaining to the meeting are posted at the following Web address: *http://www.ams.usda.gov/NOSBMeetings.*

FOR FURTHER INFORMATION CONTACT: For printed materials or additional information, write to Ms. Michelle Arsenault, Special Assistant, National Organic Standards Board, USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2648—So., Mail Stop 0268, Washington, DC 20250–0268; Phone: (202) 720–3252; Email: *nosb@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: The NOSB makes recommendations about whether a substance should be allowed or prohibited in organic production and/or handling, assists in the development of standards for organic production, and advises the Secretary on other aspects of the implementation of the Organic Foods Production Act (7 U.S.C. 6501–6522). The NOSB currently has seven subcommittees working on various aspects of the Organic Program. The subcommittees are: Compliance, Accreditation, and Certification; Crops; Handling; Livestock; Materials; Policy Development; and the ad hoc Genetically Modified Organisms (GMO). The primary purpose of NOSB meetings is to provide an opportunity for the organic community to provide input on proposed NOSB recommendations and discussion items. The meetings also allow the NOSB to receive updates from the USDA National Organic Program (NOP) on issues pertaining to organic agriculture. The meeting will be open to the public. The meeting agenda, NOSB proposals and discussion documents, instructions for submitting and viewing public comments, and instructions for requesting a time slot for oral comments are available on the NOP Web site at *http://www.ams.usda.gov/NOSBMeetings.* The discussion documents and proposals encompass a wide range of topics, including: Substances petitioned to the National List of Allowed and Prohibited Substances (National List), updates from working groups on technical issues, and amendments to the NOSB Policies and Procedures Manual.

Public Comments: Written public comments will be accepted through Tuesday, March 19, 2013 via *www.regulations.gov.* Comments received after that date may not be reviewed by the NOSB before the meeting. The NOP strongly prefers comments to be submitted electronically; however, written comments may also be submitted by Tuesday, March 19, 2013 via mail to Ms. Michelle Arsenault, Special Assistant, National Organic Standards Board, USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2648–S, Mail Stop 0268, Washington, DC 20250–0268.

Instructions for viewing all comments are posted at *www.regulations.gov* and *http://www.ams.usda.gov/NOSBMeetings.*

The NOSB has scheduled time for oral comments from the public, and will accommodate as many individuals and organizations as possible during these sessions. Individuals and organizations wishing to make oral presentations at the meeting must pre-register to request one time slot by visiting *http://www.ams.usda.gov/NOSBMeetings* or by calling (202) 720–0081. The deadline to sign up for an oral public comment slot is Tuesday, March 19, 2013. All persons making oral presentations should also provide their comments in advance through the written comment process. Written submissions may contain supplemental information other than that presented in the oral presentation. Persons submitting written comments at the meeting are asked to provide two hard copies.

Meeting Accommodations: The meeting hotel is ADA Compliant, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in this public meeting, please notify Michelle Arsenault at *michelle.arsenault@ams.usda.gov* or (202) 720–0081. Determinations for reasonable accommodation will be made on a case-by-case basis.

Dated: February 11, 2013.

Rex A. Barnes,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2013–03492 Filed 2–14–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2009–0070]

Agency Information Collection Activities; OMB Approval Received

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act, this notice announces the Office of Management and Budget's approval of a collection of information contained in the Animal and Plant Health Inspection Service's final rule regarding the possession, use, and transfer of select agents and toxins.

FOR FURTHER INFORMATION CONTACT: For information on select agents and toxins, contact Mr. Charles L. Divan, Acting Director, APHIS Agriculture Select Agent Program, APHIS, 4700 River Road Unit 2, Riverdale, MD 20737–1231; (301) 851–3300, option 1. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION: On October 5, 2012, we published in the **Federal Register** (77 FR 61056–61081, Docket No. APHIS–2009–0070) a final rule [1] that amended and republished the list of select agents and toxins that have the potential to pose a severe threat to animal or plant health, or to animal or plant products; reorganized the list of select agents and toxins based on the relative potential of each select agent or toxin to be misused to adversely affect human, plant, or animal health; and amended the regulations in order to add definitions and clarify language concerning security, training, biosafety, biocontainment, and incident response.

Because of changes made in the final rule in response to comments or for other reasons, some of those provisions included information collection requirements that differed from those originally submitted for approval to the Office of Management and Budget (OMB) in conjunction with the proposed rule, which was published in the **Federal Register** on October 3, 2011 (76 FR 61228–61244, Docket No. APHIS–2009–0070). OMB requested that we combine those most recent information collection requirements with the existing information collection requirements associated with the existing select agent regulations at 7 CFR part 331 and 9 CFR part 121.

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), OMB has approved the information collection requirements associated with the select agent regulations as amended by our October 2012 final rule under OMB control number 0579–0213 (expires November 30, 2015).

Done in Washington, DC, this 11th day of February 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–03584 Filed 2–14–13; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the final rule, its preceding proposed rule, and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2009-0070.*

DEPARTMENT OF AGRICULTURE

Forest Service

Annual List of Newspapers Used for Publication of Legal Notice of Decisions for the Rocky Mountain Region; Colorado, Wyoming, South Dakota, Nebraska, Kansas

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that Ranger Districts, Forests, and the Regional Office of the Rocky Mountain Region will use to publish notices for pubic comments on actions subject to the provisions of 36 CFR part 215 or 218. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of actions subject to public comment and decisions subject to appeal under 36 CFR 215 or objection under 36 CFR 218.

Responsible Officials in the Rocky Mountain Region of the USDA Forest Service will publish notices of availability for comment and notices of decisions that may be subject to administrative appeal under 36 CFR Part 215. These notices will be published in the legal notice section of the newspapers listed in the Supplementary Information section of this notice. As provided in 36 CFR 215.5, 215.6, and 215.7, such notice shall constitute legal evidence that the agency has given timely and constructive notice for comment and notice of decisions that may be subject to administrative appeal. Newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

Additionally, Responsible Officials in the Rocky Mountain Region of the USDA Forest Service will publish notices of availability for comment and notices of decisions that may be subject to the objection process under 36 CFR part 218. These notices will be published in the legal notice section of the newspapers listed in the Supplementary Information section of this notice. As provided in 36 CFR 218.4 and 218.9, such notice shall constitute legal evidence that the agency has given timely and constructive notice for comment and notice of decisions that may be subject to the objection process. Newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

DATES: Use of these newspapers for the purpose of publishing legal notices for comment and decisions that may be subject to appeal under 36 CFR part 215 or subject to objection under 36 CFR part 218 shall begin February 15, 2013 and continue until further notice.

ADDRESSES: USDA Forest Service, Rocky Mountain Region; ATTN: Regional Appeals Manager; 740 Simms Street, Golden, Colorado 80401.

FOR FURTHER INFORMATION CONTACT: John Rupe, 303 275–5148.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Responsible Officials in the Rocky Mountain Region of the USDA Forest Service will give legal notice of decisions that may be subject to appeal under 36 CFR part 215 or subject to the objection process under 36 CFR part 218 in the following newspapers which are listed by Forest Service administrative unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the primary newspaper which shall be used to constitute legal evidence that the agency has given timely and constructive notice for comment and for decisions that may be subject to administrative appeal or objection process. As provided in 36 CFR 215.15, the time frame for appeal shall be based on the date of publication of a notice for decision in the primary newspaper. As provided in 36 CFR 218.9, the time frame for an objection shall be based on the date of publication of a notice for decision in the primary newspaper.

Notice by Regional Forester of Availability for Comment and Decisions

The Denver Post, published daily in Denver, Denver County, Colorado, for decisions affecting National Forest System lands in the States of Colorado, Nebraska, Kansas, South Dakota, and eastern Wyoming and for any decision of Region-wide impact. For those Regional Forester decisions affecting a particular unit, the day after notice will also be published in the newspaper specific to that unit.

Arapaho and Roosevelt National Forests and Pawnee National Grassland, Colorado

Notice by Forest Supervisor of Availability for Comment and Decisions

Coloradoan, published daily in Fort Collins, Larimer County, Colorado.

Notice by District Rangers of Availability for Comment and Decisions

Canyon Lakes District: *Coloradoan,* published daily in Fort Collins, Larimer County, Colorado.

Pawnee District: *Greeley Tribune,* published daily in Greeley, Weld County, Colorado.

Boulder District: *Daily Camera,* published daily in Boulder, Boulder County, Colorado.

Clear Creek District: *Clear Creek Courant,* published weekly in Idaho Springs, Clear Creek County, Colorado.

Sulphur District: *Middle Park Times,* published weekly in Granby, Grand County, Colorado.

Grand Mesa, Uncompahgre, and Gunnison National Forests, Colorado

Notice by Forest Supervisor of Availability for Comment and Decisions

Grand Junction Daily Sentinel, published daily in Grand Junction, Mesa County, Colorado.

Notice by District Rangers of Availability for Comment and Decisions

Grand Valley District: *Grand Junction Daily Sentinel,* published daily in Grand Junction, Mesa County, Colorado.

Paonia District: *Delta County Independent,* published weekly in Delta, Delta County, Colorado.

Gunnison Districts: *Gunnison Country Times,* published weekly in Gunnison, Gunnison County, Colorado.

Norwood District: *Telluride Daily Planet,* published daily in Telluride, San Miguel County, Colorado.

Ouray District: *Montrose Daily Press,* published daily in Montrose, Montrose County, Colorado.

Pike and San Isabel National Forests and Cimarron and Comanche National Grasslands

Notice by Forest Supervisor of Availability for Comment and Decisions

Pueblo Chieftain, published daily in Pueblo, Pueblo County, Colorado.

Notice by District Rangers of Availability for Comment and Decisions

San Carlos District: *Pueblo Chieftain,* published daily in Pueblo, Pueblo County, Colorado.

Comanche District-Carrizo Unit: *Plainsman Herald,* published weekly in Springfield, Baca County, Colorado.

Comanche District-Timpas Unit: *Tribune Democrat,* published daily in La Junta, Otero County, Colorado.

Cimarron District: The Elkhart *Tri-State News,* published weekly in Elkhart, Morton County, Kansas.

South Platte District: *News Press,* published weekly in Castle Rock, Douglas County, Colorado.

Leadville District: *Herald Democrat,* published weekly in Leadville, Lake County, Colorado.

Salida District: *The Mountain Mail,* published daily in Salida, Chaffee County, Colorado.

South Park District: *Fairplay Flume,* published weekly in Bailey, Park County, Colorado.

Pikes Peak District: *The Gazette,* published daily in Colorado Springs, El Paso County, Colorado.

Rio Grande National Forest, Colorado

Notice by Forest Supervisor of Availability for Comment and Decisions

Valley Courier, published daily in Alamosa, Alamosa County, Colorado.

Notice by District Rangers of Availability for Comment and Decisions

Valley Courier, published daily in Alamosa, Alamosa County, Colorado.

Routt National Forest, Colorado

Notice by Forest Supervisor of Availability for Comment and Decisions

Laramie Daily Boomerang, published daily in Laramie, Albany County, Wyoming.

Notice by District Rangers of Availability for Comment and Decisions

San Juan National Forest, Colorado

Notice by Forest Supervisor of Availability for Comment and Decisions

Durango Herald, published daily in Durango, La Plata County, Colorado.

Notice by District Rangers of Availability for Comment and Decisions

Durango Herald, published daily in Durango, La Plata County, Colorado.

White River National Forest, Colorado

Notice by Forest Supervisor of Availability for Comment and Decisions

The Glenwood Springs Post Independent, published daily in Glenwood Springs, Garfield County, Colorado.

Notice by District Rangers of Availability for Comment and Decisions

Aspen-Sopris District: *Aspen Times,* published daily in Aspen, Pitkin County, Colorado.

Blanco District: *Rio Blanco Herald Times,* published weekly in Meeker, Rio Blanco County, Colorado.

Dillon District: *Summit Daily,* published daily in Frisco, Summit County, Colorado.

Eagle-Holy Cross District: *Vail Daily,* published daily in Vail, Eagle County, Colorado.

Rifle District: *Citizen Telegram,* published weekly in Rifle, Garfield County, Colorado.

Nebraska National Forest, Nebraska and South Dakota

Notice by Forest Supervisor of Availability for Comment and Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

Notice by District Rangers of Availability for Comment and Decisions

Bessey District/Charles E. Bessey Tree Nursery: *The North Platte Telegraph,* published daily in North Platte, Lincoln County, Nebraska.

Pine Ridge District: *The Rapid City Journal,* published daily in Rapid City, Pennington County, South Dakota.

Samuel R. McKelvie National Forest: *The North Platte Telegraph,* published daily in North Platte, Lincoln County, Nebraska.

Fall River and Wall Districts, Buffalo Gap National Grassland: *The Rapid City Journal,* published daily in Rapid City, Pennington County, South Dakota.

Fort Pierre National Grassland: *The Capital Journal,* published Monday through Friday in Pierre, Hughes County, South Dakota.

Black Hills National Forest, South Dakota and Eastern Wyoming

Notice by Forest Supervisor of Availability for Comment and Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

Notice by District Rangers of Availability for Comment and Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

Bighorn National Forest, Wyoming

Notice by Forest Supervisor of Availability for Comment and Decisions

Casper Star-Tribune, published daily in Casper, Natrona County, Wyoming.

Notice by District Rangers of Availability for Comment and Decisions

Casper Star-Tribune, published daily in Casper, Natrona County, Wyoming.

Medicine Bow-Routt National Forests and Thunder Basin National Grassland, Colorado and Wyoming

Notice by Forest Supervisor of Availability for Comment and Decisions

Laramie Daily Boomerang, published daily in Laramie, Albany County, Wyoming.

Notice by District Rangers of Availability for Comment and Decisions

Laramie District: *Laramie Daily Boomerang,* published daily in Laramie, Albany County, Wyoming.

Douglas District: *Casper Star-Tribune,* published daily in Casper, Natrona County, Wyoming.

Brush Creek-Hayden District: *Rawlins Daily Times,* published daily in Rawlins, Carbon County, Wyoming.

Hahns Peak-Bears Ears District: *Steamboat Pilot,* published weekly in Steamboat Springs, Routt County, Colorado.

Yampa District: *Steamboat Pilot,* published weekly in Steamboat Springs, Routt County, Colorado.

Parks District: *Jackson County Star,* published weekly in Walden, Jackson County, Colorado.

Shoshone National Forest, Wyoming

Notice by Forest Supervisor of Availability for Comment and Decisions

Cody Enterprise, published twice weekly in Cody, Park County, Wyoming.

Notice by District Rangers of Availability for Comment and Decisions

Clarks Fork District: *Powell Tribune,* published twice weekly in Powell, Park County, Wyoming.

Wapiti and Greybull Districts: *Cody Enterprise,* published twice weekly in Cody, Park County, Wyoming.

Wind River District: *The Dubois Frontier,* published weekly in Dubois, Fremont County, Wyoming.

Washakie District: *Lander Journal,* published twice weekly in Lander, Fremont County, Wyoming.

Dated: February 11, 2013.

Daniel J. Jirón,

Regional Forester, Rocky Mountain Region.

[FR Doc. 2013–03534 Filed 2–14–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 130131092–3092–01]

XRIN 0691–XC011

BE–605: Quarterly Survey of Foreign Direct Investment in the United States—Transactions of U.S. Affiliate With Foreign Parent

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis is informing the public that it is conducting the mandatory survey titled BE–605, Quarterly Survey of Foreign Direct Investment in the United States—Transactions of U.S. Affiliate with Foreign Parent. This survey is authorized by the International Investment and Trade in Services Survey Act.

SUPPLEMENTARY INFORMATION: This Notice constitutes legal notification to all United States persons (defined below) who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, the surveys. Reports are due 30 days after the close of each calendar or fiscal quarter end; 45 days if the report is for the final quarter of the financial reporting year. The BE–605 survey forms and instructions are available on the BEA Web site at *http://www.bea.gov/internationallindex.htm#surveys.*

Definitions

(a) *United States,* when used in a geographic sense, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

(b) *Foreign* when used in a geographic sense, means that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States.

(c) *Person* means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency).

(d) *Business enterprise* means any organization, association, branch, or venture that exists for profit making purposes or to otherwise secure economic advantage, and any ownership of any real estate.

Who Must Report

(a) The quarterly Form BE–605 is required from each U.S. business enterprise in which a foreign entity has a direct and/or indirect ownership interest of 10 percent or more of the voting stock or an equivalent interest if an unincorporated business and that meets the additional conditions detailed in Form BE–605.

(b) Entities required to report will be contacted individually by the Bureau of Economic Analysis (BEA). Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on transactions between parent companies and their affiliates and on direct investment positions (stocks).

How To Report: Reports can be filed using BEA's electronic reporting system at *http://www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, may be obtained at the BEA Web site given above. Form BE–605 inquiries can be made by phone to (202) 606–5577 or by sending an email to *be605@bea.gov.*

When To Report: Reports are due to BEA 30 days after the close of each calendar or fiscal quarter; 45 days if the report is for the final quarter of the financial reporting year.

Paperwork Reduction Act Notice: This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0009. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for these collections of information are estimated to average 1 hour per response. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Paperwork Reductions Project 0608–0009, Washington, DC 20503.

Authority: 22 U.S.C. 3101–3108.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

[FR Doc. 2013–03611 Filed 2–14–13; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 130103005–3005–01]

XRIN 0691–XC002

BE–577: Quarterly Survey of U.S. Direct Investment Abroad— Direct Transactions of U.S. Reporter With Foreign Affiliate

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis, Department of Commerce, is informing the public that it is conducting the mandatory surveys titled BE–577, Quarterly Survey of U.S. Direct Investment Abroad—Direct Transactions of U.S. Reporter with Foreign Affiliate. This survey is authorized by the International Investment and Trade in Services Survey Act.

SUPPLEMENTARY INFORMATION: This Notice constitutes legal notification to all United States persons (defined below) who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, the surveys. Reports are due 30 days after the close of each calendar or fiscal quarter end; 45 days if the report is for the final quarter of the financial reporting year. The BE–577 survey forms and instructions are available on the BEA Web site at *www.bea.gov/internationallindex.htm#surveys.*

Definitions

(a) *United States,* when used in a geographic sense, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and all territories and possessions of the United States.

(b) *Foreign* when used in a geographic sense, means that which is situated outside the United States or which belongs to or is characteristic of a country other than the United States.

(c) *Person* means any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency).

(d) *Business enterprise* means any organization, association, branch, or venture that exists for profit making purposes or to otherwise secure economic advantage, and any ownership of any real estate.

Who Must Report

(a) The quarterly Form BE–577 is required from each U.S. person that has a direct and/or indirect ownership interest of at least 10 percent of the voting stock in an incorporated foreign business enterprise or an equivalent interest in an unincorporated foreign business enterprise and that meets the additional conditions detailed in Form BE–577.

(b) Entities required to report will be contacted individually by the Bureau of Economic Analysis (BEA). Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on transactions between parent companies and their affiliates and on direct investment positions (stocks).

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, may be obtained at the BEA Web site given above. Form BE–577 inquiries can be made by phone to (202) 606–5557 or by sending an email to *be577@bea.gov.*

When To Report: Reports are due to BEA 30 days after the close of each calendar or fiscal quarter; 45 days if the report is for the final quarter of the financial reporting year.

Paperwork Reduction Act Notice: This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0004. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. Public reporting burden for these collections of information are estimated to average 1 hour per response. Send comments regarding this burden estimate to Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington DC 20230; and to the Office of Management and Budget, Paperwork Reductions Project 0608–0004, Washington DC 20503.

Authority: 22U.S.C. 3101–3108.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

[FR Doc. 2013–03607 Filed 2–14–13; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Economic Development Administration

The National Advisory Council on Innovation and Entrepreneurship Meeting of the National Advisory Council on Innovation and Entrepreneurship

AGENCY: U.S. Department of Commerce.

ACTION: Notice of an Open Meeting Cancellation.

SUMMARY: The National Advisory Council on Innovation and Entrepreneurship (NACIE) has cancelled its open meeting, originally planned for Tuesday, February 19, 2013. The meeting, which was to be the quarterly meeting of NACIE, will not be held this quarter. We expect the next quarterly meeting to be held later this year. Please visit the Web site of the Economic Development Administration (*www.eda.gov*) to see documents related to previous NACIE meetings and activities and notices about future meetings.

FOR FURTHER INFORMATION CONTACT: Nish Acharya, Office of Innovation and Entrepreneurship, Room 70007R, 1401 Constitution Avenue, Washington DC 20230; telephone: 202–482–4068.

Dated: February 6, 2013.

Nish Acharya

Director, Office of Innovation & Entrepreneurship, U.S. Department of Commerce.

[FR Doc. 2013–03124 Filed 2–14–13; 8:45 am]

BILLING CODE 3510–03–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Connor Hayden Kraegel, 19917 Spurrier Avenue, Poolesville, MD 20837; Order Denying Export Privileges

On August 24, 2011, in the U.S. District Court, District of Maryland, Connor Hayden Kraegel (''Kraegel'') was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778 (2006 & Supp. IV 2010)) (''AECA''). Specifically, Kraegel was convicted of knowingly and willfully exporting from the United States a set of AN/AVS–6 night vision goggles, which is designated as a defense article on the United States Munitions List, without having first obtained from the Department of State a license for such export. Kraegel was sentenced to eight months of prison, to run concurrent with the sentence imposed in the United States District Court for the District of Montana, Case 10–27–BU–SWM. Kraegel was entitled to credit for time served and was released from prison on April 2, 2012. Kraegel is also listed on the U.S. Department of State Debarred List.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'') [1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the Export Administration Act (''EAA''), the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); see also Section 11(h) of the EAA, 50 U.S.C. app. § 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); see also 50 U.S.C. app. § 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of Kraegel's conviction for violating the AECA, and have provided notice and an opportunity for Kraegel to make a written submission to BIS, as provided in Section 766.25 of the Regulations. I have received a submission from Kraegel. Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Kraegel's export privileges under the Regulations for a period of 10 years from the date of Kraegel's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Kraegel had an interest at the time of his conviction.

Accordingly, it is hereby *ordered.*

I. Until August 24, 2021, Connor Hayden Kraegel, with a last known address at: 19917 Spurrier Avenue, Poolesville, MD 20837, and when acting for or on behalf of Kraegel, his representatives, assigns, agents or employees (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2012). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. §§ 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 15, 2012 (77 FR 49699 (August 16, 2012)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)).

has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Kraegel by affiliation, ownership, control or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until August 24, 2021.

VI. In accordance with Part 756 of the Regulations, Kraegel may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VII. A copy of this Order shall be delivered to the Kraegel. This Order shall be published in the **Federal Register**.

Issued this 8th day of February, 2013.

Bernard Kritzer,

Director, Office of Exporter Services .

[FR Doc. 2013–03547 Filed 2–14–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Transportation and Related Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on

March 7, 2013, 9:30 a.m., in the Herbert C. Hoover Building, Room 6087B, 14th Street between Constitution & Pennsylvania Avenues NW. Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

Agenda

Public Session

1. Welcome and Introductions.
2. Status reports by working group chairs.
3. Public comments and Proposals.

Closed Session

4. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference to 20 participants on a first come, first serve basis. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov* no later than February 28, 2013.

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 19, 2012, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § (10)(d)), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482·2813.

Dated: February 11, 2013.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2013–03617 Filed 2–14–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–900]

Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2009–2010

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 6, 2011, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on diamond sawblades and parts thereof (diamond sawblades) from the People's Republic of China (the PRC). The period of review (POR) is January 23, 2009, through October 31, 2010. For the final results, we continue to find that certain companies covered by this review made sales of subject merchandise at less than normal value.

DATES: *Effective Date:* February 15, 2013.

FOR FURTHER INFORMATION CONTACT: Michael Romani or Yang Jin Chun, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0198 or (202) 482–5760, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 6, 2011, the Department published the preliminary results of the administrative review of the antidumping duty order on diamond sawblades from the PRC.[1] We received case and rebuttal briefs with respect to the *Preliminary Results* and, at the request of interested parties, we held a hearing on February 23, 2012.

On April 5, 2012, the Diamond Sawblades Manufacturers Coalition (the petitioner) alleged that Korean respondents Ehwa Diamond Industrial Co., Ltd., and Shinhan Diamond Industrial Co., Ltd. and SH Trading Inc., and their respective Chinese subsidiaries Weihai Xiangguang Mechanical Industrial Co., Ltd. (Weihai), and Qingdao Shinhan Diamond Industrial Co., Ltd. (Qingdao Shinhan), sold diamond sawblades into

[1] *See Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind Review in Part,* 76 FR 76135 (December 6, 2011) (*Preliminary Results*).

the United States bearing false country of origin designations.

We extended the due date for the final results of review to June 4, 2012.[2] On June 4, 2012, the Department deferred the final results of this administrative review in order to address the petitioner's fraud allegations.[3]

On January 8, 2013, we issued a post-preliminary memorandum finding that the information submitted by Weihai and Qingdao Shinhan is reliable for the final results of the review.[4]

We have conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Fraud Allegation

We continue to find the information Weihai and Qingdao Shinhan submitted in this review to be reliable for the final results of review.[5]

Scope of the Order

The merchandise subject to the order is diamond sawblades. The diamond sawblades subject to the order are currently classifiable under subheadings 8202 to 8206 of the Harmonized Tariff Schedule of the United States (HTSUS), and may also enter under 6804.21.00. The HTSUS subheadings are provided for convenience and customs purposes. A full description of the scope of the order is contained in the Final Decision Memorandum. The written description is dispositive.

[2] *See Diamond Sawblades and Parts Thereof From the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review,* 77 FR 14733 (March 13, 2012), and *Diamond Sawblades and Parts Thereof From the Republic of Korea and the People's Republic of China: Extension of Time Limits for the Final Results of the Antidumping Duty Administrative Reviews,* 77 FR 20788 (April 6, 2012).

[3] *See* Memorandum to Paul Piquado, Assistant Secretary for Import Administration, entitled ''Diamond Sawblades and Parts Thereof From the Republic of Korea and the People's Republic of China: Deferral of the Final Results of the First Antidumping Duty Administrative Reviews,'' dated June 4, 2012.

[4] *See* Memorandum to Paul Piquado, Assistant Secretary for Import Administration, entitled ''2009/2010 Review of the Antidumping Duty Orders on Diamond Sawblades and Parts Thereof From the Republic of Korea and the People's Republic of China: Post-Preliminary Analysis,'' dated January 8, 2013. *See also* Memorandum to Paul Piquado, Assistant Secretary for Import Administration, from Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, entitled ''Issues and Decision Memorandum for the Administrative Review of the Antidumping Duty Order on Diamond Sawblades and Parts Thereof From the People's Republic of China covering the Period January 23, 2009, through October 31, 2010,'' dated February 8, 2013 (Final Decision Memorandum), which is hereby adopted by this notice, at Comment 27.

[5] *See* Final Decision Memorandum for more details.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review are addressed in the Final Decision Memorandum. A list of the issues raised is attached to this notice as an appendix. The Final Decision Memorandum is a public document and is on file electronically *via* Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and is available to all parties in the Central Records Unit, Room 7046 of the main Department of Commerce building. In addition, a complete version of the Final Decision Memorandum can be accessed directly on the Import Administration Web site at *http://ia.ita.doc.gov/frn/index.html.* The signed Final Decision Memorandum and the electronic versions of the Final Decision Memorandum are identical in content.

Rescission of Administrative Review in Part

We preliminarily found that Shanghai Deda Industry & Trading Co., Ltd. (Shanghai Deda) did not have any exports of subject merchandise during the POR and, on this basis, we stated our intent to rescind the review in part.[6] We continue to find that the company had no shipments of subject merchandise during the POR and are rescinding this review for Shanghai Deda.

On March 28, 2011, the petitioner withdrew its request for review of the following companies:

Electrolux Construction Products (Xiamen) Co. Ltd.
Hebei Jikai Industrial Group Co., Ltd.
Huachang Diamond Tools Manufacturing Co., Ltd.
Jiangsu Fengyu Tools Co., Ltd.
Jiangyin Likn Industry Co., Ltd.
Protech Diamond Tools
Quanzhou Shuangyang Diamond Tools Co., Ltd.
Task Tools & Abrasives
Zhejiang Wanda Import and Export Co.
Zhejiang Wanda Tools Group Corp.
Zhejiang Wanli Super-hard Materials Co., Ltd.

In the *Preliminary Results,* we assigned the PRC-wide rate to these companies. In its case brief, Hebei Jikai Industrial Group Co., Ltd. (Hebei Jikai) requested that the Department rescind the review of these companies because the petitioner was the only party that requested their review and because the petitioner timely withdrew its request. On August 8, 2012, we rescinded the review in part for Hebei Jikai and Jiangyin Likn Industry Co., Ltd.[7] Because the other companies listed above have not previously received a separate rate, we did not rescind this review with respect to those companies. While the request for review for those companies was timely withdrawn, those companies remain part of the PRC-wide entity.

[6] *See Preliminary Results,* 76 FR at 76136.

Surrogate Country

In the *Preliminary Results,* we treated the PRC as a non-market-economy (NME) country and, therefore, we calculated normal value in accordance with section 773(c) of the Act. We selected India as the surrogate country, pursuant to section 773(c)(4) of the Act, because it is a significant producer of merchandise comparable to subject merchandise and is at a level of economic development comparable to the PRC.[8] For the final results of review, we have continued to treat the PRC as an NME country and have used the same primary surrogate country, India.

Affiliation

In the *Preliminary Results,* we treated five companies as a single entity, the ATM Single Entity,[9] for purposes of calculating a single margin.[10] We have received and evaluated the comments with respect to ATM Single Entity and whether to expand it to include two additional companies. For these final results, we have determined not to include any additional companies in ATM Single Entity.[11]

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate.[12] It is

[7] *See Diamond Sawblades and Parts Thereof From the People's Republic of China: Rescission of Antidumping Duty Administrative Review in Part,* 77 FR 47362 (August 8, 2012).

[8] *See Preliminary Results,* 76 FR at 76136.

[9] ATM Single Entity includes Advanced Technology & Materials Co., Ltd., Beijing Gang Yan Diamond Products Co., Ltd., HXF Saw Co., Ltd., AT&M International Trading Co., Ltd., and Cliff International Ltd.

[10] *See Preliminary Results,* 76 FR at 76136.

[11] *See* Final Decision Memorandum at Comments 1 and 2.

[12] *See, e.g.,Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China,* 71 FR 29303 (May 22, 2006), and *Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances,*

the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[13]

In the *Preliminary Results,* we found that, in addition to the companies we selected for individual examination, certain companies demonstrated their eligibility for separate rate status by demonstrating that they operated free of *de jure* and *de facto* government control.[14] We received comments from interested parties regarding the separate rate status of ATM Single Entity. Based on the information on the record of this review, we continue to find that ATM Single Entity has demonstrated an absence of *de jure* and *de facto* government control and is, thus, eligible for a separate rate.[15] We also continue to find that the other respondents that received separate rates in the *Preliminary Results* are eligible for separate rates.

Separate Rate for a Non-Selected Company

In the *Preliminary Results,* with regard to companies not selected for individual examination, we explained that, because (1) the statute and the Department's regulations do not address the establishment of a rate to be applied to individual companies not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act, and (2) the Department's usual practice has been to average the margins for the selected companies, excluding margins that are zero, *de minimis,* or based entirely on facts available,[16] we assigned the antidumping duty margin for Weihai to companies not selected for individual examination and eligible for a separate rate. We are continuing to assign them Weihai's rate, 9.55 percent, for these final results. In assigning this separate rate, we did not impute the actions of any other companies to the behavior of the companies not individually examined but based this determination on record evidence that is reasonably reflective of the potential dumping margin for the companies not selected for individual examination and eligible for a separate rate in this administrative review.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made revisions that have changed the results for certain companies. Additionally, we have made calculation programming changes for the final results. For further details on the changes we made for these final results, *see* the company-specific analysis memoranda, the Final Decision Memorandum, and the final surrogate value memorandum dated concurrently with this notice.

Final Results of the Review

As a result of the administrative review, we determine that the following weighted-average percentage dumping margins exist for the period January 23, 2009, through October 31, 2010:

Company [17]	Margin (percent)
Advanced Technology & Materials Co., Ltd.	0.15
ASHINE Diamond Tools Co., Ltd.	9.55
AT&M International Trading Co., Ltd.	0.15
Beijing Gang Yan Diamond Products Co.	0.15
Bosun Tools Co., Ltd.	9.55
Chengdu Huifeng Diamond Tools Co., Ltd.	9.55
Cliff International Ltd.[18]	0.15
Danyang Hantronic Import & Export Co., Ltd.	9.55
Danyang Huachang Diamond Tools Manufacturing Co., Ltd.	9.55
Danyang NYCL Tools Manufacturing Co., Ltd.	9.55
Fujian Quanzhou Wanlong Stone Co., Ltd.	9.55
Guilin Tebon Superhard Material Co., Ltd.	9.55
Hangzhou Deer King Industrial & Trading Co., Ltd.	9.55
Hebei Husqvarna-Jikai Diamond Tools Co., Ltd.	9.55
Hebei XMF Tools Group Co., Ltd.[19]	9.55
Henan Huanghe Whirlwind Co., Ltd.	9.55
Henan Huanghe Whirlwind International Co., Ltd.	9.55
Huzhou Gu's Import & Export Co., Ltd.	9.55
HXF Saw Co., Ltd.	0.15
Jiangsu Fengtai Diamond Tool Manufacture Co., Ltd.	9.55
Jiangsu Inter-China Group Corporation	9.55
Jiangsu Youhe Tool Manufacturer Co., Ltd.	9.55
Qingdao Shinhan Diamond Industrial Co., Ltd.	9.55
Quanzhou Zhongzhi Diamond Tool Co. Ltd.	9.55
Rizhao Hein Saw Co., Ltd.	9.55
Saint-Gobain Abrasives (Shanghai) Co., Ltd.	9.55
Shanghai Robtol Tool Manufacturing Co., Ltd.	9.55
Shijiazhuang Global New Century Tools Co., Ltd.	9.55
Weihai Xiangguang Mechanical Industrial Co., Ltd.	9.55
Wuhan Wanbang Laser Diamond Tools Co.	9.55
Xiamen ZL Diamond Technology Co., Ltd.	9.55
Zhejiang Wanli Tools Group Co., Ltd.	9.55
PRC-Wide Entity [20]	164.09

Assessment

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated, whenever possible, an exporter/importer (or customer)-specific assessment rate or value for merchandise subject to this review as described below.

For ATM Single Entity, we will instruct CBP to liquidate all entries

In Part: Certain Lined Paper Products From the People's Republic of China, 71 FR 53079 (September 8, 2006).

[13] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 75 FR 81565, 81566 (December 28, 2010) (*Initiation*).

[14] *See Preliminary Results,* 76 FR at 76136–37.

[15] *See* Final Decision Memorandum at Comments 1 and 2.

[16] *See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part,* 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

[17] For explanations on the names of certain companies, *see Preliminary Results,* 76 FR at 76136–37.

[18] Cliff International Ltd. also used the company name Cliff (Tianjin) International Ltd., according to various documents provided in ATM Single Entity's May 10, 2011, section A response.

[19] Hebei XMF Tools Group Co., Ltd., reported that its correct name is Hebei XMF Tools Group Co., Ltd., and not Hebei XMF Tools (Group) Co., Ltd., which is the name we stated in the *Initiation,* 75 FR at 81567, and the *Preliminary Results,* 77 FR at 76137, 76141. *See* the letter from Hebei XMF Tools Group Co., Ltd., dated December 2, 2011.

[20] The PRC-wide entity includes the following companies: Central Iron and Steel Research Institute Group, Danyang Aurui Hardware Products Co., Ltd., Danyang Dida Diamond Tools Manufacturing Co., Ltd., Danyang Tsunda Diamond Tools Co., Ltd., Danyang Weiwang Tools Manufacturing Co., Ltd., Electrolux Construction Products (Xiamen) Co. Ltd., Huachang Diamond Tools Manufacturing Co., Ltd., Hua Da Superabrasive Tools Technology Co., Ltd., Jiangsu Fengyu Tools Co., Ltd., Protech Diamond Tools, Pujiang Talent Diamond Tools Co., Ltd., Quanzhou Shuangyang Diamond Tools Co., Ltd., Sichuan Huili Tools Co., Task Tools & Abrasives, Wuxi Lianhua Superhard Material Tools Co., Ltd., Zhejiang Tea Import & Export Co., Ltd., Zhejiang Wanda Import and Export Co., Zhejiang Wanda Tools Group Corp., and Zhejiang Wanli Super-hard Materials Co., Ltd.

during the POR without regard to antidumping duties in accordance with 19 CFR 351.106(c)(2). For customers or importers of Weihai for which we do not have entered value, we have calculated customer/importer-specific antidumping duty assessment amounts based on the ratio of the total amount of antidumping duties calculated for the examined sales of subject merchandise to the total quantity of subject merchandise sold in those transactions. For customers or importers of Weihai for which we received entered-value information, we have calculated customer/importer-specific antidumping duty assessment rates based on customer/importer-specific *ad valorem* rates in accordance with 19 CFR 351.212(b)(1). For all non-selected respondents that received a separate rate, we will instruct CBP to apply an antidumping duty assessment rate of 9.55 percent to all entries of subject merchandise that entered the United States during the POR. For all other companies, we will instruct CBP to apply an antidumping duty assessment rate of 164.09 percent to all entries of subject merchandise exported by these companies.

We intend to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results of review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by the companies listed above that have separate rates, the cash deposit rate will be the rate established in this final results of review for each exporter as listed above, except if the rate is zero or *de minimis,* then no cash deposit will be required for that exporter; (2) for previously investigated companies not listed above that have separate rates, the cash deposit rate will continue to be the company-specific rate published for the investigation; (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 164.09 percent; (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC entity that supplied that non-PRC exporter. These deposit requirements shall remain in effect until further notice.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

These final results of review are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: February 8, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix

1. *Separate Rate*
2. *Corporate Affiliation*
3. *Respondent Selection*
4. *Surrogate Values*

Air Freight
Brokerage and Handling
Cores
Diamond Powder
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5. *Status of the Order*
6. *Combination Rates*
7. *Assessment Period*
8. *Instructions to CBP*
9. *Zeroing*
10. *Fraud Allegations and the Reliability of Respondents' Submissions*

[FR Doc. 2013–03481 Filed 2–14–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–981]

Utility Scale Wind Towers From the People's Republic of China: Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the ''Department'') and the International Trade Commission (''ITC''), the Department is issuing an antidumping duty order on utility scale wind towers (''wind towers'') from the People's Republic of China (''PRC'').

DATES: *Effective Date:* February 15, 2013.

FOR FURTHER INFORMATION CONTACT: Lilit Astvatsatrian, Shawn Higgins, Thomas Martin, or Trisha Tran, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6412, (202) 482–0679, (202) 482–3936, or (202) 482–4852, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (''Act''), on December 26, 2012, the Department published the final determination of sales at less than fair value in the antidumping duty investigation of wind towers from the PRC.[1] On February 8, 2013, the ITC notified the Department of its affirmative determination that an industry in the United States is materially injured or threatened with material injury by reason of imports of wind towers from the PRC.[2]

Scope of the Order

The merchandise covered by this order are certain wind towers, whether or not tapered, and sections thereof. Certain wind towers are designed to support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a

[1] *See Utility Scale Wind Towers From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 77 FR 75992 (December 26, 2012).

[2] *See Utility Scale Wind Towers from China and Vietnam,* USITC Investigation Nos. 701–TA–486 and 731–TA–1195–1196 (Final), USITC Publication 4372 (February 2013) (''*ITC Report''*).

minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.,* where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.,* flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with nonsubject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof.

Merchandise covered by the order is currently classified in the Harmonized Tariff System of the United States (''HTSUS'') under subheadings 7308.20.0020 [3] or 8502.31.0000.[4] Prior to 2011, merchandise covered by the order was classified in the HTSUS under subheading 7308.20.0000 and may continue to be to some degree. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Antidumping Duty Order

As noted above, on February 8, 2013, in accordance with section 735(d) of the Act, the ITC notified the Department of its determination that an industry in the United States is materially injured or threatened with material injury by reason of imports of wind towers from the PRC. Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (''CBP'') to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of wind towers from the PRC.

Section 736(b)(1) of the Act establishes a ''general rule'' that, if the ITC, in its final determination, finds ''material injury or threat of material injury which, but for the suspension of liquidation under section 733(d)(2) {of the Act} would have led to a finding of material injury,'' then entries of the subject merchandise, the liquidation of which has been suspended pursuant to the Department's preliminary determination under section 733(d)(2) of the Act, shall be subject to the imposition of antidumping duties. Section 736(b)(2) of the Act establishes a ''special rule'' that, if the ITC's final injury determination is based on the threat of material injury (other than threat of material injury described in the ''general rule'') antidumping duties shall be assessed on subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination. Under this ''special rule,'' the Department orders CBP to terminate suspension and refund any cash deposit of estimated antidumping duties for entries made since the Department's preliminary antidumping duty determination [5] and before publication of the ITC's final injury determination.[6]

After reviewing the ITC's final determination, the Department determines that the ''special rule'' pursuant to section 736(b)(2) of the Act is applicable to the imposition of antidumping duties under this order. Of the votes in the ITC's final determination, two commissioners determined that an industry in the United States is materially injured by reason of imports of utility scale wind towers from the PRC and the Socialist Republic of Vietnam, one commissioner determined that an industry in the United States is threatened with material injury by reason of such imports and further determined that he would not have found material injury but for the suspension of liquidation, and three commissioners determined that an industry in the United States is not materially injured or threatened with material injury by reason of such imports.[7] Because the ITC's determination that an industry in the United States is materially injured or threatened with material injury is not accompanied by a finding that material injury would have resulted but for the suspension of liquidation of entries since the *Preliminary Determination,* the Department determines that the ''general rule'' of section 736(b)(1) of the Act does not apply.[8] Therefore, in accordance with the ''special rule'' of section 736(b)(2) of the Act, the Department will instruct CBP to terminate the suspension of liquidation for entries of wind towers from the PRC entered, or withdrawn from warehouse, for consumption prior to the publication of the ITC's final determination and refund any cash deposit of estimated antidumping duties for these entries.

Suspension of Liquidation and Collection of Cash Deposit

In accordance with sections 735(c)(1)(B) and 736(b)(2) of the Act, the Department will instruct CBP to suspend liquidation on all entries of subject merchandise from the PRC made on or after the date of the publication of the ITC's final affirmative injury determination. The Department will also instruct CBP to require cash deposits equal to the estimated amount by which the normal value exceeds the U.S. price as indicated in the chart below. These cash deposit rates will be adjusted, where appropriate, for export subsidies. These instructions suspending liquidation will remain in effect until further notice.

Accordingly, effective on the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, a cash deposit for estimated antidumping duties based on the weighted-average dumping margins, adjusted, where appropriate,

[3] Wind towers are classified under HTSUS 7308.20.0020 when imported as a tower or tower section(s) alone.

[4] Wind towers may also be classified under HTSUS 8502.31.0000 when imported as part of a wind turbine (*i.e.,* accompanying nacelles and/or rotor blades).

[5] *See Utility Scale Wind Towers From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 77 FR 46034 (August 2, 2012) (''*Preliminary Determination''*).

[6] Section 736(b)(2) of the Act (''the Department shall release any bonds or other security made, and refund any cash deposit made* * *with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before {the date of the publication of the ITC's affirmative final injury determination}''); *see, e.g., Narrow Woven Ribbons With Woven Selvedge From Taiwan and the People's Republic of China: Antidumping Duty Orders,* 75 FR 53632, 53633 (September 1, 2010) (where the Department ordered the termination of suspension and refund of duties for entries occurring prior to the publication of the ITC's affirmative threat determination).

[7] *See ITC Report.*

[8] *See MBL (USA) Corp.* v. *United States,* 16 C.I.T. 108, 111–114 (1992) (finding that the Act requires the Department, when confronted with the same ITC voting pattern as present here, to refund duties collected prior to the ITC's publication of its final injury determination).

for export subsidies.[9] The rate for the PRC-wide entity applies to all combinations of producers and exporters of subject merchandise not specifically listed under the ''Final Determination of Antidumping Investigation'' section below.

Final Determination of Antidumping Investigation

The weighted-average dumping margins are as follows:

Exporter	Producer	Weighted-average dumping margin (percent)
Chengxi Shipyard Co., Ltd.	Chengxi Shipyard Co., Ltd.	47.59
Titan Wind Energy (Suzhou) Co., Ltd.	Titan (Lianyungang) Metal Product Co., Ltd.	44.99
Titan Wind Energy (Suzhou) Co., Ltd.	Titan Wind Energy (Suzhou) Co., Ltd.	44.99
CS Wind Corporation	CS Wind China Co., Ltd.	46.38
Guodian United Power Technology Baoding Co., Ltd.	Guodian United Power Technology Baoding Co., Ltd.	46.38
Sinovel Wind Group Co., Ltd.	Qiangsheng Wind Equipment Co., Ltd.	46.38
PRC-Wide Entity		70.63

PRC-Wide Entity includes AVIC International Renewable Energy Co., Ltd.

This notice constitutes the antidumping duty order with respect to wind towers from the PRC pursuant to section 736(a) of the Act.

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: February 12, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–03727 Filed 2–14–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–842, A–580–868]

Large Residential Washers From Mexico and the Republic of Korea: Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the International Trade Commission (the ITC), the Department is issuing antidumping duty orders on large residential washers (washers) from Mexico and the Republic of Korea (Korea).

DATES: *Effective Date:* February 15, 2013.

FOR FURTHER INFORMATION CONTACT: Brian Smith (Mexico) or David Goldberger (Korea), AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–4136, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (the Act), the Department published its affirmative final determinations of sales at less-than-fair-value in the antidumping duty investigations of washers from Korea and Mexico on December 26 and 27, 2012, respectively.[1] On February 8, 2013, the ITC notified the Department of its affirmative determinations that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of less-than-fair-value imports of washers from Mexico and Korea.[2]

Scope of the Orders

The products covered by these orders are all large residential washers and certain subassemblies thereof from Mexico and Korea.

For purposes of these orders, the term ''large residential washers'' denotes all automatic clothes washing machines, regardless of the orientation of the rotational axis, except as noted below, with a cabinet width (measured from its widest point) of at least 24.5 inches (62.23 cm) and no more than 32.0 inches (81.28 cm).

Also covered are certain subassemblies used in large residential washers, namely: (1) All assembled cabinets designed for use in large residential washers which incorporate, at a minimum: (a) at least three of the six cabinet surfaces; and (b) a bracket; (2) all assembled tubs[3] designed for use in large residential washers which incorporate, at a minimum: (a) a tub; and (b) a seal; (3) all assembled baskets[4] designed for use in large residential washers which incorporate, at a minimum: (a) A side wrapper;[5] (b) a base; and (c) a drive hub;[6] and (4) any combination of the foregoing subassemblies.

Excluded from the scope are stacked washer-dryers and commercial washers. The term ''stacked washer-dryers'' denotes distinct washing and drying machines that are built on a unitary frame and share a common console that controls both the washer and the dryer. The term ''commercial washer'' denotes an automatic clothes washing machine designed for the ''pay per use'' market meeting either of the following two definitions:

(1) (a) it contains payment system electronics;[7] (b) it is configured with an externally mounted steel frame at least six inches high that is designed to house a coin/token operated payment system (whether or not the actual coin/token operated payment system is installed at

[9] *See* section 736(a)(3) of the Act.

[1] *See Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers From the Republic of Korea,* 77 FR 75988 (December 26, 2012); and *Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers from Mexico,* 77 FR 76288 (December 27, 2012).

[2] *See Certain Large Residential Washers from Korea and Mexico,* Investigation Nos. 701–TA–488 and 731–TA–1199–1200 (Final), U.S. ITC Publication 4378 (February 2013).

[3] A ''tub'' is the part of the washer designed to hold water.

[4] A ''basket'' (sometimes referred to as a ''drum'') is the part of the washer designed to hold clothing or other fabrics.

[5] A ''side wrapper'' is the cylindrical part of the basket that actually holds the clothing or other fabrics.

[6] A ''drive hub'' is the hub at the center of the base that bears the load from the motor.

[7] ''Payment system electronics'' denotes a circuit board designed to receive signals from a payment acceptance device and to display payment amount, selected settings, and cycle status. Such electronics also capture cycles and payment history and provide for transmission to a reader.

the time of importation); (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners;[8] *or*

(2) (a) it contains payment system electronics; (b) the payment system electronics are enabled (whether or not the payment acceptance device has been installed at the time of importation) such that, in normal operation,[9] the unit cannot begin a wash cycle without first receiving a signal from a *bona fide* payment acceptance device such as an electronic credit card reader; (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners.

Also excluded from the scope are automatic clothes washing machines with a vertical rotational axis and a rated capacity of less than 3.70 cubic feet, as certified to the U.S. Department of Energy pursuant to 10 CFR 429.12 and 10 CFR 429.20, and in accordance with the test procedures established in 10 CFR part 430.

The products subject to these orders are currently classifiable under subheading 8450.20.0090 of the Harmonized Tariff System of the United States (HTSUS). Products subject to these orders may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.

Antidumping Duty Orders

As stated above, on February 8, 2013, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determinations in these investigations, in which it found material injury with respect to washers from Mexico and Korea.[10] Because the ITC determined that imports of washers from Mexico and Korea are materially injuring a U.S. industry, all unliquidated entries of such merchandise from Mexico and Korea, entered or withdrawn from warehouse, are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by the Department, antidumping duties equal to the amounts listed below for all relevant entries of washers from Mexico and Korea. These antidumping duties will be assessed on unliquidated entries of washers from Mexico and Korea entered, or withdrawn from warehouse, for consumption on or after August 3, 2012, the date of publication of the preliminary determinations,[11] but will not include entries occurring after the expiration of the provisional measures period and before publication of the ITC's final injury determinations as further described below.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct CBP to continue to suspend liquidation on all entries of washers from Mexico and Korea. We will also instruct CBP to require cash deposits equal to the amounts indicated below. These instructions suspending liquidation will remain in effect until further notice.

Consistent with our practice, where the product under investigation is also subject to a concurrent countervailing duty investigation, we will instruct CBP to require a cash deposit[12] equal to the amount by which the normal value exceeds the export price or constructed export price, less the amount of the countervailing duty determined to constitute an export subsidy.[13] In the case of washers from Mexico, because the product under investigation is not subject to a countervailing duty investigation, the cash deposit rates have not been adjusted. In the case of washers from Korea, although the product under investigation is also subject to a concurrent countervailing duty investigation, with respect to LG Electronics, Inc. (LG), the Department found no countervailing duty attributable to export subsidies. Therefore, we have not offset the cash deposit rate shown below for LG. However, with respect to Daewoo Electronics Corporation (Daewoo), Samsung Electronics Co., Ltd. (Samsung), and All Others, the Department did find countervailing duties attributable to export subsidies. Therefore, for Daewoo, we offset the AFA antidumping margin (*i.e.,* 82.41 percent) by the countervailing duty rate attributable to export subsidies (*i.e.,* 3.30 percent).[14] For Samsung, we offset the antidumping margin (*i.e.,* 9.29 percent) by the countervailing duty rate attributable to export subsidies (*i.e.,* 0.06 percent).[15] For All Others, we offset the antidumping margin (*i.e.,* 11.86 percent) by the countervailing duty rate attributable to export subsidies (*i.e.,* 0.06 percent).[16] Accordingly, effective on the date of publication of the ITC's final affirmative injury determinations, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, cash deposits equal to the amounts indicated below.[17]

Provisional Measures

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to no more than six months. At the request of exporters that account for a significant proportion of washers from Mexico and Korea, we extended the four-month period to no

[8] A ''security fastener'' is a screw with a non-standard head that requires a non-standard driver. Examples include those with a pin in the center of the head as a ''center pin reject'' feature to prevent standard Allen wrenches or Torx drivers from working.

[9] ''Normal operation'' refers to the operating mode(s) available to end users (*i.e.,* not a mode designed for testing or repair by a technician).

[10] Id.

[11] *See Large Residential Washers From Mexico: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 77 FR 46401 (August 3, 2012); and *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Large Residential Washers From the Republic of Korea,* 77 FR 46391 (August 3, 2012).

[12] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

[13] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Carbazole Violet Pigment 23 From India,* 69 FR 67306, 67307 (November 17, 2004).

[14] *See Large Residential Washers From the Republic of Korea: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination,* 77 FR 33181 (June 5, 2012), unchanged in *Large Residential Washers From the Republic of Korea: Final Affirmative Countervailing Duty Determination,* 77 FR 75975 (December 26, 2012).

[15] *See* Memorandum to The File entitled ''Samsung Final Determination Calculation Memorandum,'' dated December 18, 2012.

[16] *See* Memorandum to The File entitled ''Calculation of the All-Others Rate for the Final Determination of the Antidumping Duty Investigation of Large Residential Washers from Korea,'' dated December 18, 2012.

[17] *See* section 736(a)(3) of the Act.

more than six months.[18] In the underlying investigations, the Department published the preliminary determinations on August 3, 2012. Therefore, the six-month period beginning on the date of publication of the preliminary determinations ended on January 30, 2013. Furthermore, section 737(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of washers from Mexico and Korea entered, or withdrawn from warehouse, for consumption after January 30, 2013, the date provisional measures expired, until and through the day preceding the date of publication of the ITC's final injury determinations in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final determinations in the **Federal Register**.

THE WEIGHTED-AVERAGE DUMPING MARGINS ARE AS FOLLOWS:

Country	Manufacturer/Exporter	Dumping margin	Cash deposit (%)
Mexico	Electrolux Home Products Corp. NV/Electrolux Home Products De Mexico, S.A. de C.V. 36.52 36.52.		
	Samsung Electronics Mexico S.A. de C.V.	72.41	72.41
	Whirlpool International S. de R.L. de C.V.	72.41	72.41
	All Others	36.52	36.52
Korea	Daewoo Electronics Corporation	82.41	79.11
	LG Electronics Inc.	13.02	13.02
	Samsung Electronics Co., Ltd.	9.29	9.23
	All Others	11.86	11.80

This notice constitutes the antidumping duty orders with respect to washers from Mexico and Korea pursuant to section 736(a) of the Act. Interested parties can find an updated list of antidumping duty orders currently in effect at *http://ia.ita.doc.gov/stats/iastats1.html.*

These orders are published in accordance with section 736(a) of the Act and section 351.211 of the Department's regulations.

Dated: February 8, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–03630 Filed 2–14–13; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–814]

Utility Scale Wind Towers From the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the ''Department'') and the International Trade Commission (''ITC''), the Department is issuing an antidumping duty order on utility scale wind towers (''wind towers'') from the Socialist Republic of Vietnam (''Vietnam''). In addition, the Department is amending its final determination to correct certain ministerial errors.

DATES: *Effective Date:* February 15, 2013.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Charles Riggle, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4162 or (202) 482–0650, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i)(1) of the Tariff Act of 1930, as amended (''Act''), on December 26, 2012, the Department published the final determination of sales at less than fair value in the antidumping duty investigation of wind towers from Vietnam.[1] On February 8, 2013, the ITC notified the Department of its affirmative determination that an industry in the United States is materially injured or threatened with material injury by reason of imports of wind towers from Vietnam.[2]

Scope of the Order

The merchandise covered by this order are certain wind towers, whether or not tapered, and sections thereof. Certain wind towers are designed to support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.,* where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.,* flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with nonsubject

[18] *See* letters to the Department from LG Electronics Inc. and LG Electronics USA, Inc. (collectively, LG), and Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. (collectively, Samsung) (Korea); and Electrolux Home Products, Corp., N.V. and Electrolux Home Products, Inc. (collectively, Electrolux) (Mexico); dated July 13, 2012.

[1] *See Utility Scale Wind Towers From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value,* 77 FR 75984 (December 26, 2012) (''*Final Determination''*).

[2] *See Utility Scale Wind Towers from China and Vietnam,* USITC Investigation Nos. 701–TA–486 and 731–TA–1195–1196 (Final), USITC Publication 4372 (February 2013) (''*ITC Report''*).

merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof.

Merchandise covered by the order is currently classified in the Harmonized Tariff System of the United States (''HTSUS'') under subheadings 7308.20.0020 [3] or 8502.31.0000.[4] Prior to 2011, merchandise covered by the order was classified in the HTSUS under subheading 7308.20.0000 and may continue to be to some degree. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Amendment to the Final Determination

On December 26, 2012, the Department published its affirmative final determination in this proceeding.[5] On December 26, 2012, CS Wind Group (''CSWG''), the respondent in this investigation, and the Wind Tower Trade Coalition (''Petitioner'') submitted timely ministerial error allegations and requested, pursuant to 19 CFR 351.224, that the Department correct the alleged ministerial errors in the dumping margin calculations. On December 31, 2012, Petitioner submitted timely rebuttal comments.

After analyzing all interested party comments and rebuttals, we have determined, in accordance with section 735(e) of the Act and 19 CFR 351.224(e), that we made the following ministerial errors in our calculations for the *Final Determination* with respect to CSWG:

- We unintentionally omitted the factors of production (''FOPs'') for steel bar, stainless steel pipe, flat-rolled plates and stone grit from the normal value used in the dumping margin calculation program.
- We unintentionally omitted the FOPs for steel bar, stainless steel pipe and flat-rolled plates from the calculation of the average surrogate value used as facts available to account for the difference between the packed weight of a tower and the sum of the FOPs of such a tower.

For a detailed discussion of all alleged ministerial errors, as well as the Department's analysis, *see* Memorandum to Paul Piquado, Assistant Secretary for Import Administration, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, concerning, ''Ministerial Error Memorandum, Amended Final Determination of Sales at Less Than Fair Value: Utility Scale Wind Towers from the Socialist Republic of Vietnam,'' dated January 18, 2013 (''Ministerial Error Memorandum'').

In the *Final Determination,* we assigned the Vietnam-wide entity a rate based on the highest transaction-specific dumping margin for the mandatory respondent, CSWG.[6] Because the change in CSWG's dumping margin calculation as a result of correcting for the above-identified ministerial errors affects the rate assigned to the Vietnam-wide entity, we have also amended the rate assigned to the Vietnam-wide entity.[7] The amended weighted-average dumping margins are provided, below.

Antidumping Duty Order

As noted above, on February 8, 2013, in accordance with section 735(d) of the Act, the ITC notified the Department of its determination that an industry in the United States is materially injured or threatened with material injury by reason of imports of wind towers from Vietnam. Therefore, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (''CBP'') to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of wind towers from Vietnam.

Section 736(b)(1) of the Act establishes a ''general rule'' that, if the ITC, in its final determination, finds ''material injury or threat of material injury which, but for the suspension of liquidation under section 733(d)(2) {of the Act} would have led to a finding of material injury,'' then entries of the subject merchandise, the liquidation of which has been suspended pursuant to the Department's preliminary determination under section 733(d)(2) of the Act, shall be subject to the imposition of antidumping duties. Section 736(b)(2) of the Act establishes a ''special rule'' that, if the ITC's final injury determination is based on the threat of material injury (other than threat of material injury described in the ''general rule'') antidumping duties shall be assessed on subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination. Under this ''special rule,'' the Department orders CBP to terminate suspension and refund any cash deposit of estimated antidumping duties for entries made since the Department's preliminary antidumping duty determination [8] and before publication of the ITC's final injury determination.[9]

After reviewing the ITC's final determination, the Department determined that the ''special rule'' pursuant to section 736(b)(2) of the Act is applicable to the imposition of antidumping duties under this order. Of the votes in the ITC's final determination, two commissioners determined that an industry in the United States is materially injured by reason of imports of utility scale wind towers from the People's Republic of China and Vietnam, one commissioner determined that an industry in the United States is threatened with material injury by reason of such imports and further determined that he would not have found material injury but for the suspension of liquidation, and three commissioners determined that an industry in the United States is not materially injured or threatened with material injury by reason of such imports.[10] Because the ITC's determination that an industry in the United States is materially injured or threatened with material injury is not accompanied by a finding that material injury would have resulted but for the suspension of liquidation of entries since the *Preliminary Determination,* the Department determines that the ''general rule'' of section 736(b)(1) of the

[3] Wind towers are classified under HTSUS 7308.20.0020 when imported as a tower or tower section(s) alone.

[4] Wind towers may also be classified under HTSUS 8502.31.0000 when imported as part of a wind turbine (*i.e.,* accompanying nacelles and/or rotor blades).

[5] *See Final Determination.*

[6] *See Final Determination.*

[7] *See* Ministerial Error Memorandum.

[8] *See Utility Scale Wind Towers from the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 77 FR 46058 (August 2, 2012) (''*Preliminary Determination''*).

[9] Section 736(b)(2) of the Act (''the Department shall release any bonds or other security made, and refund any cash deposit made * * * with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before {the date of the publication of the ITC's affirmative final injury determination}''); *see, e.g., Narrow Woven Ribbons With Woven Selvedge From Taiwan and the People's Republic of China: Antidumping Duty Orders,* 75 FR 53632, 53633 (September 1, 2010) (where the Department ordered the termination of suspension and refund of duties for entries occurring prior to the publication of the ITC's affirmative threat determination).

[10] *See ITC Report.*

Act does not apply.[11] Therefore, in accordance with the ''special rule'' of section 736(b)(2) of the Act, the Department will instruct CBP to terminate the suspension of liquidation for entries of wind towers from Vietnam entered, or withdrawn from warehouse, for consumption prior to the publication of the ITC's final determination and refund any cash deposit of estimated antidumping duties for these entries.

Suspension of Liquidation and Collection of Cash Deposit

In accordance with sections 735(c)(1)(B) and 736(b)(2) of the Act, the Department will instruct CBP to suspend liquidation on all entries of subject merchandise from Vietnam made on or after the date of the publication of the ITC's final affirmative determination. The Department will also instruct CBP to require cash deposits equal to the estimated amount by which the normal value exceeds the U.S. price as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

Accordingly, effective on the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, a cash deposit for estimated antidumping duties based on the weighted-average dumping margins. The rate for the Vietnam-wide entity applies to all combinations of producers and exporters of subject merchandise not specifically listed under the ''Amended Final Determination of Antidumping Investigation'' section below.

Amended Final Determination of Antidumping Investigation

The weighted-average dumping margins are as follows:

Exporter	Producer	Weighted-average dumping margin (percent)
The CS Wind Group*	The CS Wind Group	51.54
Vietnam-Wide Entity**		58.54

* The CS Wind Group consists of CS Wind Vietnam Co., Ltd. and CS Wind Corporation.
* The Vietnam-Wide Entity includes Vina-Halla Heavy Industries Ltd.

This notice constitutes the antidumping duty order with respect to wind towers from Vietnam pursuant to section 736(a) of the Act.

This order and amended final determination are published in accordance with sections 736(a) and 735(e) of the Act and 19 CFR 351.211 and 351.224(e).

Dated: February 12, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–03725 Filed 2–14–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–982]

Utility Scale Wind Towers from the People's Republic of China: Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the ''Department'') and the International Trade Commission (''ITC''), the Department is issuing a countervailing duty order on utility scale wind towers (''wind towers'') from the People's Republic of China (''PRC'').

DATES: *Effective Date:* February 15, 2013.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson and Patricia Tran, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4793 or (202) 482–1503, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 705(d) of the Tariff Act of 1930, as amended (''Act''), on December 26, 2012, the Department published the final determination in the countervailing duty investigation of wind towers from the PRC.[1] On February 8, 2013, the ITC notified the Department of its affirmative determination that an industry in the United States is materially injured or threatened with material injury by reason of imports of wind towers from the PRC.[2]

Scope of the Order

The merchandise covered by this order are certain wind towers, whether or not tapered, and sections thereof. Certain wind towers are designed to support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.,* where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.,* flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are

[11] *See MBL (USA) Corp.* v. *United States,* 16 C.I.T. 108, 111–114 (1992) (finding that the Act requires the Department, when confronted with the same ITC voting pattern as present here, to refund duties collected prior to the ITC's publication of its final injury determination).

[1] *See Utility Scale Wind Towers From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 77 FR 75978 (December 26, 2012).

[2] *See Utility Scale Wind Towers from China and Vietnam,* USITC Investigation Nos. 701–TA–486 and 731–TA–1195–1196 (Final), USITC Publication 4372 (February 2013) (''*ITC Report''*).

normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with nonsubject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof.

Merchandise covered by the order is currently classified in the Harmonized Tariff System of the United States (''HTSUS'') under subheadings 7308.20.0020[3] or 8502.31.0000.[4] Prior to 2011, merchandise covered by the order was classified in the HTSUS under subheading 7308.20.0000 and may continue to be to some degree. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Countervailing Duty Order

As noted above, on February 8, 2013, in accordance with section 705(d) of the Act, the ITC notified the Department of its determination that an industry in the United States is materially injured or threatened with material injury by reason of imports of wind towers from the PRC. Therefore, in accordance with section 706(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (''CBP'') to assess, upon further instruction by the Department, countervailing duties equal to the amount of the net countervailable subsidy for all relevant entries of wind towers from the PRC.

Section 706(b)(1) of the Act establishes a ''general rule'' that, if the ITC, in its final determination, finds ''material injury or threat of material injury which, but for the suspension of liquidation under section 703(d)(2) {of the Act} would have led to a finding of material injury,'' then entries of the subject merchandise, the liquidation of which has been suspended pursuant to the Department's preliminary determination under section 703(d)(2) of the Act, shall be subject to the imposition of countervailing duties. Section 706(b)(2) of the Act establishes a ''special rule'' that, if the ITC's final injury determination is based on the threat of material injury (other than threat of material injury described in the ''general rule'') countervailing duties shall be assessed on subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination. Under this ''special rule,'' the Department orders CBP to terminate suspension and refund any cash deposit of estimated countervailing duties for entries made since the Department's preliminary countervailing duty determination[5] and before publication of the ITC's final injury determination.[6]

After reviewing the ITC's final determination, the Department determines that the ''special rule'' pursuant to section 706(b)(2) of the Act is applicable to the imposition of countervailing duties under this order. Of the votes in the ITC's final determination, two commissioners determined that an industry in the United States is materially injured by reason of imports of utility scale wind towers from the PRC and the Socialist Republic of Vietnam, one commissioner determined that an industry in the United States is threatened with material injury by reason of such imports and further determined that he would not have found material injury but for the suspension of liquidation, and three commissioners determined that an industry in the United States is not materially injured or threatened with material injury by reason of such imports.[7] Because the ITC's determination that an industry in the United States is materially injured or threatened with material injury is not accompanied by a finding that material injury would have resulted but for the suspension of liquidation of entries since the *Preliminary Determination,* the Department determines that the ''general rule'' of section 706(b)(1) of the Act does not apply.[8] Therefore, in accordance with the ''special rule'' of section 706(b)(2) of the Act, the Department will instruct CBP to terminate the suspension of liquidation for entries of wind towers from the PRC entered, or withdrawn from warehouse, for consumption prior to the publication of the ITC's final determination and refund any cash deposit of estimated countervailing duties for these entries.

Suspension of Liquidation and Collection of Cash Deposit

In accordance with sections 705(c)(1)(B) and 706(b)(2) of the Act, the Department will instruct CBP to suspend liquidation on all entries of subject merchandise from the PRC made on or after the date of the publication of the ITC's final affirmative injury determination. [9] The Department will also instruct CBP to require a cash deposit for each entry of subject merchandise in an amount equal to the net countervailable subsidy rates noted below. These instructions suspending liquidation will remain in effect until further notice.

Final Determination of Countervailing Duty Investigation

Net countervailable subsidy rates noted below.

Producer/exporter	Net Subsidy Ad Valorem Rate
CS Wind China Co., Ltd., CS Wind Tech (Shanghai) Co., Ltd., and CS Wind Corporation (collectively, CS Wind)	21.86 percent

[3] Wind towers are classified under HTSUS 7308.20.0020 when imported as a tower or tower section(s) alone.

[4] Wind towers may also be classified under HTSUS 8502.31.0000 when imported as part of a wind turbine (*i.e.,* accompanying nacelles and/or rotor blades).

[5] *See Utility Scale Wind Towers From the People's Republic of China:* Preliminary Affirmative Countervailing Duty Determination, 77 FR 33422 (June 6, 2012) (*Preliminary Determination*).

[6] Section 736(b)(2) of the Act (''the Department shall release any bonds or other security made, and refund any cash deposit made . . . with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption before {the date of the publication of the ITC's affirmative final injury determination}''); *see, e.g., Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Countervailing Duty Orders,* 75 FR 53642, 53643 (September 1, 2010) (where the Department ordered the termination of suspension and refund of duties for entries occurring prior to the publication of the ITC's affirmative threat determination).

[7] *See ITC Report.*

[8] *See MBL (USA) Corp.* v. *United States,* 16 C.I.T. 108, 111–114 (1992) (finding that the Act requires the Department, when confronted with the same ITC voting pattern as present here, to refund duties collected prior to the ITC's publication of its final injury determination).

[9] The Department instructed CBP to discontinue the suspension of liquidation on October 4, 2012, four months after the publication of the *Preliminary Determination,* in accordance with section 703(d) of the Act. Section 703(d) states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Entries of wind towers from the PRC made on or after October 4, 2012, and prior to the date of publication of the ITC's final determination in the **Federal Register** are not liable for the assessment of countervailing duties because of the Department's discontinuation, effective October 4, 2012, of the suspension of liquidation.

Producer/exporter	Net Subsidy Ad Valorem Rate
Titan Wind Energy (Suzhou) Co. Ltd. (Titan Wind), Titan Lianyungang Metal Product Co. Ltd. (Titan Lianyungang), Baotou Titan Wind Power Equipment Co., Ltd. (Titan Baotou), and Shenyang Titan Metal Co., Ltd. (Titan Shenyang) (collectively, Titan Companies).	34.81 percent
All Others	28.34 percent

This notice constitutes the countervailing duty order with respect to wind towers from the PRC pursuant to section 706(a) of the Act. This order is published in accordance with section 706 (a) of the Act and 19 CFR 351.211(b).

Dated: February 12, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–03728 Filed 2–14–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–869]

Large Residential Washers From the Republic of Korea: Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the International Trade Commission (the ITC), the Department is issuing a countervailing duty order on large residential washers (washers) from the Republic of Korea (Korea).

DATES: *Effective Date:* February 15, 2013.

FOR FURTHER INFORMATION CONTACT: Justin M. Neuman, AD/CVD Operations, Office 6, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0486.

SUPPLEMENTARY INFORMATION:

Case History

In accordance with section 705(d) of the Tariff Act of 1930, as amended (the Act), on December 26, 2012, the Department published its final determination in the countervailing duty investigation of washers from Korea.[1] On February 8, 2013, the ITC notified the Department of its affirmative determination that an industry in the United States is materially injured within the meaning of section 705(b)(1)(A)(i) of the Act by reason of subsidized imports of washers from Korea.[2]

Scope of the Order

The products covered by this order are all large residential washers and certain subassemblies thereof from Korea.

For purposes of this order, the term ''large residential washers'' denotes all automatic clothes washing machines, regardless of the orientation of the rotational axis, except as noted below, with a cabinet width (measured from its widest point) of at least 24.5 inches (62.23 cm) and no more than 32.0 inches (81.28 cm).

Also covered are certain subassemblies used in large residential washers, namely: (1) all assembled cabinets designed for use in large residential washers which incorporate, at a minimum: (a) At least three of the six cabinet surfaces; and (b) a bracket; (2) all assembled tubs[3] designed for use in large residential washers which incorporate, at a minimum: (a) a tub; and (b) a seal; (3) all assembled baskets[4] designed for use in large residential washers which incorporate, at a minimum: (a) a side wrapper;[5] (b) a base; and (c) a drive hub;[6] and (4) any combination of the foregoing subassemblies.

Excluded from the scope are stacked washer-dryers and commercial washers. The term ''stacked washer-dryers'' denotes distinct washing and drying machines that are built on a unitary frame and share a common console that controls both the washer and the dryer. The term ''commercial washer'' denotes an automatic clothes washing machine designed for the ''pay per use'' market meeting either of the following two definitions:

(1)(a) It contains payment system electronics;[7] (b) it is configured with an externally mounted steel frame at least six inches high that is designed to house a coin/token operated payment system (whether or not the actual coin/token operated payment system is installed at the time of importation); (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners;[8] *or*

(2)(a) It contains payment system electronics; (b) the payment system electronics are enabled (whether or not the payment acceptance device has been installed at the time of importation) such that, in normal operation,[9] the unit cannot begin a wash cycle without first receiving a signal from a *bona fide* payment acceptance device such as an electronic credit card reader; (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners.

Also excluded from the scope are automatic clothes washing machines with a vertical rotational axis and a rated capacity of less than 3.70 cubic

[1] *See Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination,* 77 FR 75975 (December 26, 2012) (*Final Determination*).

[2] *See Certain Large Residential Washers from Korea and Mexico,* Investigation No. 701–TA–488 and 731–TA–1199–1200 (Final), U.S. ITC Publication 4378 (February 2013).

[3] A ''tub'' is the part of the washer designed to hold water.

[4] A ''basket'' (sometimes referred to as a ''drum'') is the part of the washer designed to hold clothing or other fabrics.

[5] A ''side wrapper'' is the cylindrical part of the basket that actually holds the clothing or other fabrics.

[6] A ''drive hub'' is the hub at the center of the base that bears the load from the motor.

[7] ''Payment system electronics'' denotes a circuit board designed to receive signals from a payment acceptance device and to display payment amount, selected settings, and cycle status. Such electronics also capture cycles and payment history and provide for transmission to a reader.

[8] A ''security fastener'' is a screw with a non-standard head that requires a non-standard driver. Examples include those with a pin in the center of the head as a ''center pin reject'' feature to prevent standard Allen wrenches or Torx drivers from working.

[9] ''Normal operation'' refers to the operating mode(s) available to end users (*i.e.,* not a mode designed for testing or repair by a technician).

feet, as certified to the U.S. Department of Energy pursuant to 10 CFR 429.12 and 10 CFR 429.20, and in accordance with the test procedures established in 10 CFR part 430.

The products subject to this order are currently classifiable under subheading 8450.20.0090 of the Harmonized Tariff System of the United States (HTSUS). Products subject to this order may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.

Countervailing Duty Order

As stated above, on February 8, 2013, in accordance with section 705(b)(1)(A)(i) of the Act, the ITC notified the Department of its final determination in this investigation, in which it found material injury with respect to washers from Korea.

Therefore, in accordance with section 706(a) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by the Department, countervailing duties equal to the amounts listed below for all relevant entries of washers from Korea. These countervailing duties will be assessed on unliquidated entries of washers from Korea entered, or withdrawn from warehouse, for consumption on or after June 5, 2012, the date of publication of the preliminary determination,[10] and before October 3, 2012, the date on which the Department instructed CBP to discontinue the suspension of liquidation in accordance with section 703(d) of the Act. Section 703(d) of the Act states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Entries of washing machines from Korea made on or after October 3, 2012, and prior to the date of publication of the ITC's final determination in the **Federal Register** are not liable for the assessment of countervailing duties, due to the Department's discontinuation, effective October 3, 2012, of the suspension of liquidation.

Suspension of Liquidation

In accordance with section 706 of the Act, we will direct CBP to reinstitute the suspension of liquidation on all relevant entries of washers from Korea. We will also instruct CBP to require cash deposits equal to the amounts indicated below. These instructions suspending liquidation will remain in effect until further notice. Accordingly, effective the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, cash deposits equal to the amounts indicated below:[11]

Company	Subsidy rate (percent)
Daewoo Electronics Corporation	72.30
Samsung Electronics Co., Ltd.	1.85
All-Others Rate	1.85

This notice constitutes the countervailing duty order with respect to washers from Korea pursuant to section 706(a) of the Act. Interested parties can find an updated list of countervailing duty orders currently in effect at *http://ia.ita.doc.gov/stats/iastats1.html.*

This countervailing duty order is issued and published in accordance with sections 705(c)(2) and 706 of the Act, and section 351.211 of the Department's regulations.

Dated: February 8, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–03626 Filed 2–14–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Advisory Committee on Supply Chain Competitiveness: Notice of Public Meeting

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed topics of discussion for a public meeting of the Advisory Committee on Supply Chain Competitiveness (Committee).

DATES: The meeting will be held on March 12, 2013, from 10:00 a.m. to 1:00 p.m., Eastern Standard Time (EST).

ADDRESSES: The meeting will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 6029, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard Boll, Office of Service Industries, International Trade Administration. (Phone: (202) 482–1135 or Email: *richard.boll@trade.gov*)

SUPPLEMENTARY INFORMATION:

Background: The Committee was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). It provides advice to the Secretary of Commerce on the necessary elements of a comprehensive, holistic national freight infrastructure and a national freight policy designed to support U.S. export and growth competitiveness, foster national economic competitiveness, and improve U.S. supply chain competitiveness in the domestic and global economy. For more information about the Committee visit: *http://ita.doc.gov/td/sif/DSCT/ACSCC/.*

Matters to Be Considered: Committee members are expected to discuss the major competitiveness-related topics raised at the previous Committee meeting, including trade and competitiveness; freight movement and policy; information technology and data requirements; regulatory issues; and finance and infrastructure. The Committee's subcommittees will report on the status of their work regarding these topics. The agenda may change to accommodate Committee business. The Office of Service Industries will post the final detailed agenda on its web site, *http://ita.doc.gov/td/sif/DSCT/ACSCC/,* at least one week prior to the meeting.

The meeting will be open to the public and press on a first-come, first-served basis. Space is limited. The public meeting is physically accessible to people with disabilities. Individuals requiring accommodations, such as sign language interpretation or other ancillary aids, are asked to notify Mr. Richard Boll, at (202) 482–1135 or *richard.boll@trade.gov* five (5) business days before the meeting.

Interested parties are invited to submit written comments to the Committee at any time before and after the meeting. Parties wishing to submit written comments for consideration by the Committee in advance of this meeting must send them to the Office of Service Industries (OSI), 1401 Constitution Ave NW., Room 11014,

[10] *See Large Residential Washers From the Republic of Korea: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination,* 77 FR 33181 (June 5, 2012).

[11] *See* Section 706(a)(3) of the Act. LG Electronics, Inc. (LG), a participating respondent in this investigation, received a final net subsidy rate of 0.01 percent *ad valorem,* which is *de minimis. See Final Determination,* 77 FR at 75977. As such, entries of subject merchandise produced by LG are not subject to this order.

Washington, DC, 20230, or email to *supplychain@trade.gov.*

For consideration during the meeting, and to ensure transmission to the Committee prior to the meeting, comments must be received no later than 5:00 p.m. EST on March 5, 2013. Comments received after March 5, 2013, will be distributed to the Committee, but may not be considered at the meeting. The minutes of the meeting will be posted on the Committee Web site within 60 days of the meeting.

Dated: February 12, 2013.

David Long,

Director, Office of Service Industries.

[FR Doc. 2013–03623 Filed 2–14–13; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southeast Region Dealer and Interview Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 16, 2013.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Steve Turner, (305) 361–4482 or *Steve.Turner@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a current information collection.

Fishery quotas are established for many species in the fishery management plans developed by both the Gulf of Mexico Reef Fish Fishery Management Council and the South Atlantic Fishery Management Council. The Southeast Fisheries Science Center has been delegated the responsibility to monitor these quotas. To do so in a timely manner, seafood dealers that handle these species are required to report the purchases (landings) of these species. The frequency of these reporting requirements varies depending on the magnitude of the quota (*e.g.,* lower quota usually require more frequent reporting) and the intensity of fishing effort. The most common reporting frequency is twice a month; however, some fishery quotas, (*e.g.,* the mackerel gill net) necessitate weekly or by the trip reporting.

In addition, information collection included in this family of forms includes interview with fishermen to gather information on the fishing effort, location and type of gear used on individual trips. This data collection is conducted for a subsample of the fishing trips and vessel/trips in selected commercial fisheries in the Southeast region. Fishing trips and individuals are selected at random to provide a viable statistical sample. These data are used for scientific analyses that support critical conservation and management decisions made by national and international fishery management organizations.

II. Method of Collection

Dealer reports may be emailed, faxed or mailed. Information from fisherman is obtained by face-to-face interviews.

III. Data

OMB Control Number: 0648–0013.

Form Number: None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business and other for-profit organizations.

Estimated Number of Respondents: 6,229.

Estimated Time per Response: Dealer reporting for monitoring Federal fishery annual catch limits (ACLs): Coastal fisheries dealers reporting, 10 minutes; mackerel dealer reporting (non-gillnet), 10 minutes; mackerel dealer reporting (gillnet), 10 minutes; mackerel vessel reporting (gillnet), 10 minutes; wreckfish dealer reporting, 10 minutes.

Bioprofile data from Trip Interview programs (TIP): Shrimp interviews, 10 minutes; Fin Fish interviews, 10 minutes.

Estimated Total Annual Burden Hours: 1,541.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 11, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–03521 Filed 2–14–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC501

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of meetings of the South Atlantic Fishery Management Council.

SUMMARY: In addition to a Council Member Visioning Workshop, the South Atlantic Fishery Management Council (Council) will hold meetings of the: Joint South Atlantic Fishery Management Council (SAFMC)/Gulf of Mexico Fishery Management Council (GMFMC) King and Spanish Mackerel Committee; Ecosystem-Based Management Committee; Dolphin Wahoo Committee; Golden Crab Committee; Snapper Grouper Committee; Ad Hoc Data Collection Committee; Information & Education Committee; Law Enforcement Committee; Executive Finance Committee; and a meeting of the Full Council. The Council will take action as necessary. The Council will also hold an informal public question and answer

session regarding agenda items and a formal public comment session.

DATES: The Council meeting will be held from 9 a.m. on Monday, March 4, 2013 until 5 p.m. on Friday, March 8, 2013.

ADDRESSES: The meeting will be held at the Sea Palms Resort and Conference Center, 5445 Frederica Road, St. Simons Island, GA 31522; telephone: (800) 841–6268 or (912) 638–3351; fax: (912) 638–5416.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; telephone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The items of discussion in the individual meeting agendas are as follows:

Council Member Visioning Workshop Agenda: Monday, March 4, 2013, 9 a.m. Until 12 Noon

Receive a presentation by the Ad Hoc Visioning Committee, discuss the process and provide direction to staff.

Joint SAFMC/GMFMC King and Spanish Mackerel Committee Agenda: Monday, March 4, 2013, 1:30 p.m. Until 6 p.m.

1. Receive and discuss updates on the status of commercial and recreational catches versus quotas for species under Annual Catch Limits (ACLs) and take action as appropriate.

2. Receive an overview of the Joint South Atlantic/Gulf of Mexico Mackerel Amendment 19, pertaining to permits and tournament sale requirements, and Amendment 20, regarding boundaries and transit provisions. The joint committee will modify the amendments as appropriate and provide guidance to staff.

3. Receive an overview of actions and alternatives in the South Atlantic Mackerel Framework, modify the amendment as appropriate and provide guidance to staff.

Ecosystem-Based Management Committee Agenda: Tuesday, March 5, 2013, 8 a.m. Until 10 a.m.

1. Review and discuss actions and alternatives in Coral Amendment 8, pertaining to Coral Habitat Areas of Particular Concern (HAPCs) and transit through the Oculina HAPC. Provide guidance to staff.

2. Receive a draft of the Council's Coral Memorandum of Understanding (MoU). Review and discuss input from the Habitat and Coral Advisory Panels (APs) and provide guidance to staff.

3. Receive and discuss an update on Ecosystem activities and provide guidance to staff.

Dolphin Wahoo Committee Agenda: Tuesday, March 5, 2013, 10 a.m. Until 11 a.m.

1. Receive and discuss updates on the status of commercial and recreational catches versus quotas and take action as necessary.

2. Receive an overview of scoping comments as well as the Decision Document for Dolphin Wahoo Amendment 5, pertaining to bag limit sales of fish and changes to the ACL and the Allowable Biological Catch (ABC). Discuss actions and alternatives to Amendment 5 and provide direction to staff.

Golden Crab Committee Agenda: Tuesday, March 5, 2013, 11 a.m. Until 12 Noon

1. Receive and discuss the status of commercial catches versus quotas and take action as necessary.

2. Receive a report from the Golden Crab AP meeting.

3. Receive an update on the status of Golden Crab Amendment 6, regarding catch shares. Determine whether to proceed with Amendment 6 and take action as necessary.

Snapper Grouper Committee Agenda: Tuesday, March 5, 2013, 1:30 p.m. Until 5:30 p.m. and Wednesday, March 6, 2013, 8:30 a.m. Until 5 p.m.

1. Receive and discuss updates on the status of commercial and recreational catches versus quotas for species under ACLs and take action as necessary.

2. Discuss the status of amendments currently under formal review as well as a request for an extension of the yellowtail snapper temporary rule.

3. Receive an overview of Snapper Grouper Amendment 30, regarding Vessel Monitoring Systems (VMS), including a VMS presentation. Discuss the amendment, modify it as appropriate, select preferred alternatives and recommend approval of the amendment for public hearings.

4. Discuss Regulatory Amendment 18, pertaining to vermilion snapper and red porgy. Review public hearing comments, modify the amendment as appropriate, select preferred alternatives, recommend approval of the amendment for formal Secretarial review, and deem the codified text as necessary and appropriate.

5. Discuss Amendment 27, pertaining to blue runner and the management authority for yellowtail snapper, mutton snapper and Nassau grouper. Review public hearing comments, modify the amendment as appropriate, select preferred alternatives, recommend approval of the amendment for formal Secretarial review, and deem the codified text as necessary and appropriate.

6. Discuss Regulatory Amendment 14, relating to management measures for greater amberjack, mutton snapper, gray triggerfish, hogfish, black sea bass, vermilion snapper and gag grouper. Review the options paper, provide guidance to staff on actions and alternatives, and discuss the timing of the amendment.

7. Discuss Regulatory Amendment 16 options, relating to management measures for the commercial tilefish longline fishery. Review the options paper, provide guidance to staff on actions and alternatives, and discuss the timing of the amendment.

8. Discuss Marine Protected Areas (MPAs) and HAPCs for speckled hind and warsaw grouper. Review the results of the MPA Expert Workgroup Meeting, provide guidance to staff on actions and alternatives, and discuss timing.

Note: There will be an informal public question and answer session with the NMFS Regional Administrator and the Council Chairman on Wednesday, March 6, 2013, beginning at 5:30 p.m.

Ad Hoc Data Collection Committee Agenda: Thursday, March 7, 2013, 8:30 a.m. Until 12 Noon

1. Receive an update on the status of the Joint South Atlantic/Gulf Generic Dealer Amendment, revise the amendment as appropriate and recommend approval of the amendment for formal Secretarial review.

2. Review information that relates to bycatch action in Comprehensive Ecosystem-Based Amendment 3 (CE–BA 3). Revise the amendment as appropriate and recommend approval of the amendment for formal Secretarial review.

3. Review the Joint South Atlantic/Gulf Generic For-Hire Reporting Amendment that pertains to the South Atlantic. Review the results of the Gulf Council actions, revise this portion of the amendment as appropriate, and recommend approval of these actions for formal Secretarial review. Additionally, review the information in the amendment that applies to both the Gulf and the South Atlantic, review the results of the Gulf Council actions, provide guidance to staff, and recommend approval of the next steps in the development of the amendment.

4. Receive an overview of both the Joint South Atlantic/Gulf Generic

Commercial Logbook Reporting Amendment and the Joint South Atlantic/Gulf Generic Charterboat Reporting Amendment, review the results of the Gulf Council actions, provide guidance to staff, and recommend approval of the next steps in the development of the amendments.

Information and Education Committee Agenda: Thursday, March 7, 2013, 1:30 p.m. Until 3 p.m.

1. Receive an update on the Joint Outreach Projects: Marine Recreational Education Program (MREP) and Managing Our Nations' Fisheries 3 Conference.

2. Receive an update on the use of social media tools, including: The Atlantic Coast Communication Group Social Media Workshop; the status of the smartphone regulation application; and the Council's use of Facebook. Review and discuss the recommendations of the Information & Education (I&E) AP and provide committee recommendations for Council consideration.

3. Review and discuss the recommendations of the Joint Law Enforcement (LE) and I&E AP meeting regarding outreach efforts for VMS and provide direction to staff.

4. Receive an update on the SAFMC Web site upgrade, review and discuss the recommendations of the Joint LE and I&E AP meeting regarding the upgrade and provide recommendations for Council consideration.

5. Review and discuss the proposed outreach activities for 2013–14 as well as recommendations from the I&E AP. Provide recommendations for Council consideration.

6. Review the Council Visioning Process and the Strategic Planning Process for the Information & Education Program. Review and discuss recommendations from the I&E AP and provide direction to staff.

7. Discuss the recommendations from the Joint LE and I&E AP meeting regarding communication improvements for regulatory and law enforcement issues with officers and field offices. Provide direction to staff.

Law Enforcement Committee Agenda: Thursday, March 7, 2013, 3 p.m. Until 4 p.m.

1. Receive a report from the LE AP meeting and the Joint LE and I&E AP meeting. Discuss the reports and take action as appropriate.

Executive Finance Committee Agenda: Thursday, March 7, 2013, 4 p.m. Until 5:30 p.m.

1. Receive an update on the status of the federal fiscal year (FY) 2013 budget and the calendar year (CY) 2013 budget expenditures.

2. Receive an update on the Joint Committee on South Florida Management Issues activities.

3. Discuss Council Follow-up and Priorities and address other issues as appropriate.

Council Session Agenda: Friday, March 8, 2013, 8:30 a.m. Until 5 p.m.

8:30–8:45 a.m.: Call the meeting to order, adopt the agenda and approve the December 2012 minutes.

8:45 a.m.: A formal public comment session will be held on: Snapper Grouper Regulatory Amendment 18; Snapper Grouper Amendment 27; the extension of the yellowtail snapper temporary rule; Joint South Atlantic/Gulf Generic Dealer Amendment; Comprehensive Ecosystem-Based Amendment 3; Joint South Atlantic/Gulf Generic For-Hire Reporting Amendment (South Atlantic only); followed by comment on any other item on the agenda.

10:30–11:15 a.m.: The Council will receive a report from the Snapper Grouper Committee and will approve the following amendments for formal Secretarial review: The extension of the yellowtail snapper temporary rule; Snapper Grouper Regulatory Amendment 18; and Snapper Grouper Amendment 27. The Council will approve Snapper Grouper Amendment 30 for public hearing. The Council will consider other Committee recommendations and take action as appropriate.

11:15 a.m.-12 noon: The Council will receive a presentation on Amendment 8 to the Consolidated Highly Migratory Species (HMS) Fishery Management Plan. This amendment pertains to commercial swordfish permits.

1–1:15 p.m.: The Council will receive a legal briefing on litigation. (CLOSED SESSION)

1:15–1:45 p.m.: The Council will receive a report from the Ad Hoc Data Collection Committee and will approve the following amendments for formal Secretarial review: the Joint South Atlantic/Gulf Generic Dealer Amendment; CE–BA 3; and the Joint South Atlantic/Gulf Generic For-Hire Reporting Amendment (South Atlantic only). The Council will consider other Committee recommendations and take action as appropriate.

1:45–2 p.m.: The Council will receive a report from the King & Spanish Mackerel Committee, consider other recommendations and take action as appropriate.

2–2:15 p.m.: The Council will receive a report from the Ecosystem-Based Management Committee, consider other recommendations and take action as appropriate.

2:15–2:30 p.m.: The Council will receive a report from the Dolphin Wahoo Committee, consider other recommendations and take action as appropriate.

2:30–2:45 p.m.: The Council will receive a report from the Golden Crab Committee, consider other recommendations and take action as appropriate.

2:45–3 p.m.: The Council will receive a report from the Information & Education Committee, consider other recommendations and take action as appropriate.

3–3:15 p.m.: The Council will receive a report from the Law Enforcement Committee, consider other recommendations and take action as appropriate.

3:15–3:30 p.m.: The Council will receive a report from the Executive Finance Committee, consider other recommendations and take action as appropriate.

3:30–5 p.m.: The Council will receive presentations and status reports from the NOAA Southeast Regional Office (SERO) and the NMFS Southeast Fisheries Science Center (SEFSC), review and develop recommendations on Experimental Fishing Permits, review agency and liaison reports, and discuss other business, including upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 11, 2013.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–03496 Filed 2–14–13; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List, Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add a product and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products previously furnished by such agencies.

Comments Must Be Received On or Before: 3/18/2013.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

For Further Information or to Submit Comments Contact: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 USC 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following product and services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Product

NSN: 7045–00–NIB–0393—Privacy Filter, LCD Monitor, 16:9 Aspect Ratio, 24 Widescreen.
NPA: Wiscraft, Inc., Milwaukee, WI.
Contracting Activity: General Services Administration, New York, NY.
Coverage: A-List for the Total Government Requirement as aggregated by the General Services Administration.

Services

Service Type/Locations: Custodial Service, Danville Courthouse, 700 Main Street, Danville, VA.
Norfolk Federal Building, 200 Granby St. Norfolk, VA.
NPA: Portco, Inc., Portsmouth, VA.
Contracting Activity: Public Buildings Service, GSA/PBS/R03 South Service Center, Philadelphia, PA.
Service Type/Locations: Janitorial Service, National Center for Cool and Cold Water Aquaculture, 11861 Leetown Road, Kearneysville, WV.
Appalachian Fruit Research Station, 2217 Wiltshire Road, Kearneysville, WV.
NPA: NW Works, Inc., Winchester, VA.
Contracting Activity: DEPT OF AGRICULTURE, AGRICULTURAL RESEARCH SERVICE, USDA ARS NAA 349B, Kearneysville, WV.
Service Type/Location: Warehouse Operation Service, National Labor Relations Board HQ, 1099 14th Street, NW., Washington, DC.
NPA: Linden Resources, Inc., Arlington, VA.
Contracting Activity: NATIONAL LABOR RELATIONS BOARD, WASHINGTON, DC.
Service Type/Location: Custodial Service, Elizabeth Kee Federal Building, 601 Federal Street, Bluefield, WV.
NPA: Integrated Resources, Inc., Maben, WV.
Contracting Activity: Public Buildings Service, GSA/PBS/R03 Charleston, Roanoke, Huntington, Elkins & Parkersburg FO, Charleston, WV.

Deletions

The following products are proposed for deletion from the Procurement List:

Products

Card, Index

NSN: 7530–00–238–4316

NPA: Louisiana Association for the Blind, Shreveport, LA.

Contracting Activity: General Services Administration, New York, NY.

Pen, Retractable, Cushion Grip, Gel Ink, Dignitary

NSN: 7520–01–510–7490.

NSN: 7520–01–510–7491.

Refill, Dignitary Gel Ink Pen

NSN: 7510–01–510–8416.

NSN: 7510–01–510–7493.

NPA: Industries of the Blind, Inc., Greensboro, NC.

Contracting Activity: General Services Administration, New York, NY.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2013–03589 Filed 2–14–13; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (''CAFTA–DR Agreement'')

AGENCY: The Committee for the Implementation of Textile Agreements.

ACTION: Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA–DR Agreement.

DATES: *Effective Date:* February 15, 2013.

SUMMARY: The Committee for the Implementation of Textile Agreements (''CITA'') has determined that certain three-layered composite fabric, as specified below, is not available in commercial quantities in a timely manner in the CAFTA–DR countries. The product will be added to the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3651.

For Further Information On-Line: http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf under ''Approved Requests,'' Reference number: 173.2013.01.16.Fabric.ST&RforVFCorp.

SUPPLEMENTARY INFORMATION:

Authority: The CAFTA–DR Agreement; Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (''CAFTA–DR Implementation Act''), Pub. Law 109–53; the Statement of Administrative Action, accompanying the CAFTA–DR Implementation Act; and Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

Background: The CAFTA–DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA–DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA–DR Agreement provides that this list may be modified pursuant to Article 3.25(4)-(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. *See* Annex 3.25 of the CAFTA–DR Agreement; *see also* section 203(o)(4)(C) of the CAFTA–DR Implementation Act.

The CAFTA–DR Implementation Act requires the President to establish procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA–DR Implementation Act for modifying the Annex 3.25 list. Pursuant to this authority, on September 15, 2008, CITA published modified procedures it would follow in considering requests to modify the Annex 3.25 list of products determined to be not commercially available in the territory of any Party to CAFTA–DR (*Modifications to Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement,* 73 FR 53200) (''CITA's procedures'').

On January 16, 2013, the Chairman of CITA received a request for a Commercial Availability determination (''Request'') from Sandler, Travis & Rosenberg, P.A. on behalf of VF Corp. for certain three-layered composite fabric, as specified below. On January 18, 2013, in accordance with CITA's procedures, CITA notified interested parties of the Request, which was posted on the dedicated Web site for CAFTA–DR Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply (''Response'') must be submitted by January 31, 2013, and any Rebuttal Comments to a Response must be submitted by February 6, 2013, in accordance with sections 6 and 7 of CITA's procedures. No interested entity submitted a Response to the Request advising CITA of its objection to the Request and its ability to supply the subject product.

In accordance with section 203(o)(4)(C) of the CAFTA–DR Implementation Act, and section 8(c)(2) of CITA's procedures, as no interested entity submitted a Response objecting to the Request and providing an offer to supply the subject product, CITA has determined to add the specified fabric to the list in Annex 3.25 of the CAFTA–DR Agreement.

The subject product has been added to the list in Annex 3.25 of the CAFTA–DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated Web site for CAFTA–DR Commercial Availability proceedings.

Specifications: Certain 3-layered Composite Fabric

Fabric type: Composite fabric consisting of a 3-layered fleece/shell construction, woven outer layer and brushed inner layer, bonded with a polyurethane (''PU'') membrane.

HTS: 6001.22.

Woven Face Fabric:

Fiber Content: 83.5% to 88.5% polyester; 13.3%–14.7% spandex.

Yarn Size (single ply, warp and filling): Textured polyester: 80.9 to 85.8 decitex/144 filament (116.5 to 123.6 Nm/144 filament) (72.8 to 77.3 denier/144 filament); Spandex: 43.1 to 45.7 decitex (218.4 to 231.8 Nm) (38.8 to 41.2 denier).

Thread Count: 44.9–49.6 warp ends per sq. cm by 35.2–41.3 filling picks per sq. cm.

Weave type: Plain weave.

Weight: 118.1 to 130.2 g/sq. m (3.5 to 3.9 oz./sq. yd).

Finish: Woven face—piece dyed and/or printed; Woven back—piece dyed.

Circular Double Knit Fleece Back Pile Fabric:

Fiber content: 100% polyester.

Yarn Size (single ply): 80.9 to 85.8 decitex (72.8 to 77.3 Denier) (116.5 to 123.6 Nm).

Weave type: circular double knit looped pile.

Weight: 157.1 to 173.2 g/sq. m (4.6 to 5.1 oz/sq. yd).

Finish: Knit face—piece dyed; Knit back—piece dyed.

Composite fabric:

Weight: 333.3 to 367.5 gm/sq. m (9.8 to 10.8 oz/sq. yd).

Width: 130 cm (51.18 inches).

Finish: Full contact bonding.

Properties:

Windproof: ASTM D737—Initial 1.0 cfm; 3x wash = 1.0 cfm.

Durable water resistant: AATCC 22—Initial >= 90 points; 10x wash >= 70 points.

High light fastness: AATCC 16 Opt 3—Class 3.0 @ 40 hours AFU.

Low Range Hydrostatic: JIS 1092—Initial 20,000 mm; 3x wash—20,000 mm. AATCC 127—Initial 20,000 mm; 3x wash 20,000 mm.

Water Vapour Permeability: JIS 1099—Initial 20,000 g/sq. m/24 hours; 3x wash 20,000 g/sq. m per 24 hours.

Water Vapour Transmission: ASTM E96 B—Initial 500 g/sq. m/24 hours; 3x wash 500 g/sq. m per 24 hours.

Remarks: Ranges above allow for a variance of up to five (5) percent for fabric weight, thread count and three (3) percent for fiber content and yarn size. NOTE: The yarn size designations describe a range of yarn specifications for yarn before knitting, dyeing and finishing of the fabric. They are intended as specifications to be followed by the mill in sourcing yarn used to produce the fabric. Dyeing, finishing and knitting can alter the characteristic of the yarn as it appears in the finished fabric. This specification therefore includes yarns appearing in the finished fabric as finer or coarser than the designated yarn sizes provided that the variation occurs after processing of the greige yarn and production of the fabric. The specifications for the fabric apply to the fabric itself prior to cutting and sewing of the finished garment. Such processing may alter the measurements.

Kim Glas,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2013–03618 Filed 2–14–13; 8:45 am]

BILLING CODE 3510–DS–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Submission for OMB Emergency Review

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, (PRA 95) (44 U.S.C. Chapter 35). CNCS requested that OMB review and approve its emergency request by February 22, 2013, for a period of six months. A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Amy Borgstrom, (202) 606–6930 or by email at *aborgstrom@cns.gov.*

Unfortunately, since CNCS requested OMB's approval of this emergency request by February 22, 2013, there will be not enough time for the public to provide comments through this **Federal Register** Notice before the approval date. Therefore, there will be no comment period for this request.

Type of Review: Emergency Request.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Partnership Application Instructions.

OMB Number: TBD.

Agency Number: None.

Affected Public: Nonprofit organizations and congregations.

Total Respondents: 50.

Frequency: One time.

Average Time per Response: 40 hours.

Estimated Total Burden Hours: 2000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Description: CNCS has been working closely with the Department of Education over the past several months to develop a strategic partnership that leverages strengths of both agencies to address one of our nation's most critical education needs, helping students in the lowest-achieving schools improve their academic outcomes. This proposed partnership will place AmeriCorps members in the nation's lowest performing schools starting at the beginning of this school year. It capitalizes on the strengths of the AmeriCorps model, placing members where they are most needed, while making additional human resources available to districts that are implementing the Department of Education's School Improvement Grants.

If normal clearance procedures are followed, CNCS and the Department of Education will lose the opportunity to collaborate on these partnerships, as funds must be obligated by September 30, 2013. In addition, we want to ensure that we allow enough time for applicants to submit quality applications and for the agencies to conduct a thorough review.

We are particularly interested in making grant awards in time for the Education program to be operational at the start of the school year (August/September 2013). If we begin the standard OMB clearance procedure now, we will not be able to meet this goal.

Rosa Moreno-Mahoney,

Deputy Director, AmeriCorps State and National.

[FR Doc. 2013–03467 Filed 2–14–13; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Reestablishment of Department of Defense Federal Advisory Committee

AGENCY: DoD.

ACTION: Reestablishment of Federal Advisory Committee.

SUMMARY: Under the provisions of 50 U.S.C. 1903 and the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b) (''the Sunshine Act''), and 41 CFR 102–3.50(a), the Department of Defense (DoD) gives notice that it is reestablishing the charter for the National Security Education Board (''the Board'').

The Board is a non-discretionary Federal advisory committee that shall provide the Secretary of Defense with independent advice and recommendation on developing the national capacity to educate U.S. citizens to understand foreign cultures, strengthen U.S. economic competitiveness, and enhance international cooperation and security.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Board, pursuant to 50 U.S.C. 1903(d) and consistent with Charter 37 of Title 50 U.S.C. shall perform the following functions:

a. Develop criteria for awarding scholarships, fellowships, and grants, including an order of priority in such awards that favors individuals expressing an interest in national security issues or pursuing a career in a national security position.

b. Provide for wide dissemination of information regarding the activities assisted under the statute.

c. Establish qualifications for students desiring scholarships or fellowships, and institutions of higher education desiring grants including, in the case of students desiring a scholarship or fellowship, a requirement that the students have a demonstrated commitment to the study of the discipline for which the scholarship or fellowship is to be awarded.

d. After taking into account the annual analyses of trends in language, international, area, and counter-proliferation studies under 50 U.S.C. 1906(b)(1), make recommendations to the Secretary of Defense regarding:

i. Which countries are not emphasized in other U.S. study abroad programs, such as countries in which few U.S. students are studying and countries which are of importance to the national security interests of the United States, and are, therefore, critical countries for the purposes of 50 U.S.C. 1902(a)(1)(A);

ii. Which areas within the disciplines described in 50 U.S.C. 1902(a)(1)(B) relating to the national security interests of the United States are areas of study in which U.S. students are deficient in learning and are, therefore, critical areas within those disciplines for the purposes of that section;

iii. Which areas within the disciplines described in 50 U.S.C. 1902(a)(1)(C) are areas in which U.S. students, educators, and Government employees are deficient in learning and in which insubstantial numbers of U.S. institutions of higher education provide training and are, therefore, critical areas within those disciplines for the purposes of that section;

iv. How students desiring scholarships or fellowships can be encouraged to work for an agency or office of the Federal Government involved in national security affairs or national security policy upon completion of their education; and

v. Which foreign languages are critical to the national security interests of the United States for purposes of 50 U.S.C. 1902(a)(1)(D) (relating to grants for the National Flagship Language Initiative) and 50 U.S.C. 1902(a)(1)(E) (relating to the scholarship program for advanced English language studies by heritage community citizens).

e. Encourage application for fellowships from graduate students having an educational background in any academic discipline, particularly in the area of science or technology.

f. Provide the Secretary of Defense biennially with a list of scholarship recipients and fellowship recipients, including an assessment of their foreign area and language skills, who are available to work in a national security position.

g. Not later than 30 days after a scholarship or fellowship recipient completes the study or education for which assistance was provided under the program, provide the Secretary of Defense with a report fully describing the foreign area and language skills obtained by the recipient as a result of the assistance.

h. Review the administration of the National Security Scholarships, Fellowships, and Grants Program.

The Board shall report to the Secretary of Defense. The Secretary of Defense, pursuant to 50 U.S.C. 1906, shall submit to the President and to the congressional intelligence committees an annual report of the conduct of the National Security Scholarships, Fellowships and Grants Program, which contains, at a minimum, the contents outlined in 50 U.S.C. 1906(b). In preparation of this annual report, the Secretary of Defense shall consult with the members of the Board, who shall each submit to the Secretary, as a minimum, an assessment of hiring needs in the areas of language and area studies, and a projection of the deficiencies in such areas. The Secretary shall include all assessments in the annual report.

The Department of Defense (DoD), through the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), shall provide support as deemed necessary for the Board's performance, and shall ensure compliance with the requirements of FACA, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) (''the Sunshine Act''), governing Federal statutes and regulations, and established DoD policies and procedures.

Under the provisions of 50 U.S.C 1903(b), the Board shall be composed of 14 members:

a. The following individuals or the representatives of such individuals:

I. The Secretary of Defense, who shall serve as the Chairman of the Board.

II. The Secretary of Education.

III. The Secretary of State.

IV. The Secretary of Commerce.

V. The Secretary of Homeland Security.

VI. The Secretary of Energy.

VII. The Director of National Intelligence.

VIII. The Chairperson of the National Endowment for the Humanities.

b. Six individuals appointed by the President, who shall be experts in the fields of international, language, area, and counter-proliferation studies education and who may not be officers or employees of the Federal Government.

Members of the Board appointed by the President shall be appointed for a period specified by the President at the time of their appointment, but not to exceed four years.

Consistent with 50 U.S.C. 1903, the Secretary of Defense designates the USD(P&R) as the Chairperson of the Board. If the USD(P&R) is unavailable to chair a specific session of the Board, then the Assistant Secretary of Defense for Readiness and Force Management shall perform the functions of the Chairperson of the Board while the USD(P&R) is unavailable. The authority to chair the Board may not be further delegated.

Members of the Board who are not full-time or permanent part-time Federal employees shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109 and serve as special Government employee (SGE) members. Each member of the Board is appointed to provide advice to the Government on the basis of his or her best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

Pursuant to 50 U.S.C. 1903(c), individuals appointed by the President shall receive no compensation for service on the Board. All members of the Board shall receive per diem and travel for official travel relating to the Board.

DoD, when necessary and consistent with the Board's mission and DoD policies and procedures, may establish subcommittees, task groups, and working groups to support the Board. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the USD(P&R). Such subcommittees shall not work independently of the Board, and shall report all of their recommendations and advice to the Board for full deliberation and discussion. Subcommittees have no authority to make decisions and recommendations, verbally, or in writing, on behalf of the Board; nor can any subcommittee or its members update or report directly to the DoD or any Federal officers or employees.

The Secretary or the Deputy Secretary of Defense may approve the appointment of subcommittee members for one-to-four year terms of service with annual renewals; however, no member, unless authorized by the Secretary, may serve more than two consecutive terms of service. These individuals may come from the parent committee or may be new nominees, as recommended by the USD(P&R) and based upon the subject matters under consideration.

Subcommittee members, if not full-time or part-time Government employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and shall serve as SGEs, whose appointments must be renewed by the Secretary of Defense on an annual basis. With the exception of travel and per diem for official travel related to the Board or its subcommittee, subcommittee members shall serve without compensation.

Each subcommittee member is appointed to provide advice to the Government on the basis of his or her best judgment without representing any particular point of view an in a manner that is free from conflict of interest.

All subcommittees operate under the provisions of FACA, the Sunshine Act, governing Federal statutes and regulations, and governing DoD policies and procedures.

The Board shall meet at the call of the Board's Designated Federal Officer (DFO), in consultation with Board's Chairperson. The estimated number of meetings is three per year.

The Board's DFO is required to be in attendance at all meetings of the Board and its subcommittees for the entire duration of each and every meeting. However, in the absence of the Board's DFO, a properly approved Alternate DFO, duly appointed to the Board according to DoD policies and procedures, shall attend the entire duration of all meetings of the Board and its subcommittees.

The DFO, or the Alternate DFO, shall call all meetings of the Board and its subcommittees; prepare and approve all meeting agendas; and adjourn any meeting when the DFO or Alternate DFO determines adjournment to be in the public interest or required by governing regulations or DoD policies and procedures.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the National Security Education Board membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of National Security Education Board.

All written statements shall be submitted to the Designated Federal Officer for the National Security Education Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the National Security Education Board's DFO can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The DFO, pursuant to 41 CFR 102–3.150, will announce planned meetings of the National Security Education Board. The DFO, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: February 8, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–03370 Filed 2–14–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Renewal of Federal Advisory Committee.

SUMMARY: Under the provisions of 10 U.S.C. 2113a, as amended, the Federal Advisory Committee Act of 1972 (5

U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b) (''the Sunshine Act''), and 41 CFR 102–3.50(a), the Department of Defense (DoD) gives notice that it is renewing the charter for the Board of Regents, Uniformed Services University of the Health Sciences (''the Board'').

The Board is a non-discretionary Federal advisory committee that shall assist the Secretary of Defense in an advisory capacity in carrying out the Secretary's responsibility to conduct the business of the Uniformed Services University of the Health Sciences (''the University'').

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Board shall provide advice and recommendations on academic and administrative matters critical to the full accreditation and successful operation of the University.

The Board shall report to the Secretary of Defense through the Under Secretary of Defense for Personnel and Readiness (USD(P&R)). The USD(P&R) may act upon the Board's advice and recommendations.

The Department of Defense (DoD), through the University, shall provide support, as deemed necessary, for the Board's performance, and shall ensure compliance with the requirement of FACA, the Sunshine Act, governing Federal statutes and regulations, and established policies and procedures.

Additional information and assistance, as required and approved by the Department, may be obtained from other DoD components with contracting authority and support contractors, including DoD Federally Funded Research and Development Centers for studies and analysis support.

The Board, pursuant to 10 U.S.C. 2113a, shall be composed of no more than 15 members, appointed as specified below:

a. Nine persons outstanding in the field of health care, higher education administration, or public policy shall be appointed from civilian life by the Secretary of Defense;

b. The Secretary of Defense, or his designee, who shall be an ex officio member;

c. The surgeons general of the Uniformed Services, who shall be ex officio members; and

d. The president of the University, who shall be a non-voting ex officio member.

The terms of office for each member of the Board (other than ex officio members), shall be six years except that:

a. Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

b. Any member whose term of office has expired shall continue to serve until his successor is appointed.

One of the appointed members of the Board shall be designated as Chairman by the Secretary of Defense and shall be presiding officer of the Board.

Board members that are not ex officio members shall be appointed by the Secretary of Defense and their appointments will be renewed on an annual basis according to DoD policies and procedures. Members of the Board who are not full-time or permanent part-time Federal employees shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. § 3109 and serve as special government employee (SGE) members. Pursuant to 10 U.S.C. 2113a(c) and (e), these SGEs shall serve a term of service of six years and shall be entitled to receive compensation at a rate fixed by the Secretary of Defense, in addition to travel expenses and per diem while serving away from their place of residence.

Each member of the Board is appointed to provide advice on behalf of the Government on the basis of his or her best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

The Department, when necessary, and consistent with the Board's mission and DoD policies and procedures, may establish subcommittees, task groups, and working groups to support the Board. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense or the USD(P&R). Such subcommittees shall not work independently of the Board, and shall report all their recommendations and advice solely to the Board for full deliberation and discussion. Subcommittees have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Board; nor can any subcommittee or its members update or report directly to the DoD or any Federal officers or employees.

The Secretary of Defense shall appoint subcommittee members even if the member in question is already a Board member. Subcommittee members, with the approval of the Secretary of Defense, may serve a term of service on the subcommittee of one-to-four years; however, no member, unless authorized by the Secretary of Defense, may serve more than two consecutive terms of service.

Subcommittee members, if not full-time or part-time Government employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. § 3109, and shall serve as a SGE member, whose appointments must be renewed by the Secretary of Defense on an annual basis. With the exception of travel and per diem for official travel related to the Board or its subcommittees, subcommittee members shall serve without compensation.

Each subcommittee member is appointed to provide advice on behalf of the Government on the basis of his or her best judgment without representing any particular point of view and in a manner that is free from conflict of interest.

All subcommittees operate under the provisions of FACA, the Sunshine Act, governing Federal statutes and regulations, and governing DoD policies and procedures. The Board shall meet at the call of the Board's Designated Federal Officer (DFO), in consultation with Board's Chairperson. The estimated number of meetings by the Board is four per year.

In addition, the Board's DFO is required to be in attendance at all meetings of the Board and its subcommittees for the entire duration of each and every meeting. However, in the absence of the Board's DFO, a properly approved Alternate DFO, duly appointed to the Board according to DoD policies and procedures, shall attend the entire duration of meetings of the Board or subcommittees.

The DFO, or the Alternate DFO, shall call all of the Board and its subcommittees; prepare and approve all meeting agendas; and adjourn any meeting, when the DFO, or the Alternate DFO, determines adjournment to be in the public interest or required by governing regulations or DoD policies and procedures; and chair meetings when directed to do so by the USD(P&R). Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to Board of Regents, Uniformed Services University of the Health Sciences membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of Board of Regents, Uniformed Services University of the Health Sciences.

All written statements shall be submitted to the Designated Federal Officer for the Board of Regents, Uniformed Services University of the Health Sciences, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Board of Regents, Uniformed Services University of the Health Sciences' DFO can be obtained from the GSA's FACA Database—https://www.fido.gov/facadatabase/public.asp.

The DFO, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Board of Regents, Uniformed Services University of the Health Sciences. The DFO, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: February 12, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–03586 Filed 2–14–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License of U.S. Government-Owned Invention

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e), and 37 CFR 404.7 (a)(1)(i) and 37 CFR 404.7 (b)(1)(i), announcement is made of the intent to grant an exclusive, revocable license to the invention claimed in U.S. Patent Application Serial No. 11/525,574, filed September 22, 2006, entitled ''Antibodies with Simultaneous Subsite Specificities to Protein and Lipid Epitopes,'' to Avanti Polar Lipids with its principal place of business at 700 Industrial Park Drive, Alabaster, AL 35007.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For licensing issues, Dr. Paul Mele, Office of Research & Technology Applications, (301) 619–6664. For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808; both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Anyone wishing to object to grant of this license can file written objections along with supporting evidence, if any, within 15 days from the date of this publication. Written objections are to be filed with the Command Judge Advocate (see **ADDRESSES**).

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2013–03483 Filed 2–14–13; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Policy on Contractor Profits

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice of meeting.

SUMMARY: DoD is hosting a public meeting to obtain the views of experts and interested parties in Government and the private sector regarding the profit guidelines in the Defense Federal Acquisition Regulation Supplement.

DATES: March 20, 2013, from 1:00 p.m.to 3:00 p.m., EST.

ADDRESSES: The public meeting will be held at General Services Administration (GSA), Central Office Auditorium, 1800 F Street NW., Washington, DC 20405. The GSA auditorium is located on the main floor of the building.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Foley, CPIC/DPAP, at 703–693–1145. Please cite NDAA FY 2013 Profit Policy Public Meeting.

SUPPLEMENTARY INFORMATION: DoD is interested in opening a dialogue with experts and interested parties in Government and the private sector about the requirements of section 804 of the National Defense Authorization Act for Fiscal Year 2013. Section 804, Department of Defense Policy on Contractor Profits, included a requirement for DoD to review its profit policy guidelines in order to identify any modifications to such guidelines that are necessary to ensure an appropriate link between contractor profit and contractor performance. The law also stated that, in conducting the review, the Secretary shall obtain the views of experts and interested parties in Government and the private sector.

Those planning to attend the meeting must FAX the following information to CPIC/DPAP, 703–614–1254, or email to *Patricia.Foley@osd.mil* by March 7, 2013:

- Company or organization name.
- Names of persons attending and applicable resumes summarizing expertise in this area.
- Identify if desiring to make a presentation; limit to a 10-minute presentation per company or organization.
- Last four digits of the social security number for anyone who is not a Federal Government employee with a Government badge, in order to create an attendee list for secure entry to the GSA building.
- Attendees are encouraged to arrive at least 30 minutes early to accommodate security procedures.

If you wish to make a presentation, please contact Ms. Patricia Foley, and submit a copy of your presentation 5 days prior to the meeting date, to CPIC/DPAP, 3060 Pentagon, Room 5E621, Attn: Patricia Foley, Washington, DC 20301–3060. Telephone: 703–693–1145. Submit electronic materials via email to *Patricia.Foley@osd.mil.* Please submit presentations only and cite NDAA FY 2013 Profit Policy Public Meeting in all correspondence related to the public meeting. There will be no transcription at the meeting. The submitted presentations will be the only record of the public meeting.

Special accommodations: The public meeting is physically accessible to people with disabilities. Requests for reasonable accommodations, sign language interpretation or other auxiliary aids should be directed to Patricia Foley at 703–693–1145, at least 10 working days prior to the meeting date.

The TTY number for further information is: 1–800–877–8339. When the operator answers the call, let them know the agency is the Department of Defense; the point-of-contact is Patricia Foley at 703–693–1145.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

[FR Doc. 2013–03575 Filed 2–14–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft and Final Environmental Impact Statement for the Herbert Hoover Dike Major Rehabilitation Project and Dam Safety Modification Study, Okeechobee, Glades, Hendry, Martin, and Palm Beach Counties

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers (Corps)

intends to prepare a Draft Environmental Impact Statement (EIS) for the Herbert Hoover Dike (HHD) Major Rehabilitation Project and Dam Safety Modification Study. Herbert Hoover Dike is the 143 mile embankment surrounding Lake Okeechobee in south central Florida. A Dam Safety Modification Study has been initiated for the HHD and will be focused on a system wide risk reduction approach as required for safety modifications to dams. The purpose of the study is to identify risk reduction measures that can be implemented to reduce risks in the HHD system.

On July 8 2005, the Jacksonville District, U.S. Army Corps of Engineers (Corps) issued a Final Supplemental Environmental Impact Statement (FSEIS) and Record of Decision for the Major Rehabilitation actions proposed for Reach One of the HHD. Several additional EISs and Environmental Assessments (EAs) have been completed for Reach One of the HHD, including installation of a seepage cutoff wall. The EISs for Reach 1A, Reach 1B, 1C, and 1D, and Reaches 2 and 3 have been retracted by notice in the **Federal Register** on February 5, 2013 (78 FR 8118–8119). Most recently, an EA was completed in January 2012 evaluating impacts of an Alternative Rehabilitation Plan pilot test. The purpose of this pilot test, to be constructed in the southern portion of the HHD, is to seek lower cost solutions supporting the overall risk reduction strategy. Information gained from the pilot test will be used during the Dam Safety Modification Study.

ADDRESSES: U.S. Army Corps of Engineers, Planning Division, Environmental Branch, P.O. Box 4970, Jacksonville, FL 32232–0019.

FOR FURTHER INFORMATION CONTACT: Ms. Angela Dunn at (904) 232–2108 or email at *Angela.E.Dunn@usace.army.mil.*

SUPPLEMENTARY INFORMATION: *Scoping:* A scoping letter will be used to invite comments from Federal, state, and local agencies, affected Indian tribes, and other interested private organizations and individuals. A scoping meeting will be held February 26, 2013 from 6:30 to 8:30 p.m. at the John Boy Auditorium, 1200 South W.C. Owen Avenue, Clewiston, Florida and February 28, 2013 from 6:30 to 8:30 p.m. at the Okeechobee County Health Department Auditorium, 1728 Northwest 9th Avenue, Okeechobee, Florida.

Coordination and Public Involvement: The Corps will serve as the lead Federal agency in the preparation of the Draft EIS. The Corps intends to coordinate and/or consult with an interagency team of Federal, state, and local agencies as well as affected Indian Tribes during scoping and preparation of the Draft EIS. All alternative plans will be reviewed under provisions of appropriate laws and regulations, including but not limited to the Endangered Species Act, Fish and Wildlife Coordination Act, Clean Water Act, and National Historic Preservation Act. The Draft EIS is expected to be available for public review early summer 2014.

Dated: February 5, 2013.

Eric P. Summa,

Chief, Environmental Branch.

[FR Doc. 2013–03482 Filed 2–14–13; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2012–ICCD–0055]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and approval; Comment Request; DC Choice Evaluation

AGENCY: Department of Education (ED), Institute of Education Sciences (IES).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a reinstatement with change of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before March 18, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2012–ICCD–0055 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E105, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: DC Choice Evaluation.

OMB Control Number: 1850–0800.

Type of Review: Reinstatement with change of a previously approved information collection.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 3,057.

Total Estimated Number of Annual Burden Hours: 1,009.

Abstract: This information collection requests clearance approval from the Office of Management and Budget (OMB) for the collection of data under the Evaluation of the Effectiveness of the Scholarships for Opportunity and Results (SOAR) Act Program. In particular, we are requesting approval for: (1) parent, student, and principal surveys, and (2) records abstraction from DC Public School (DCPS), from the District of Columbia Public Charter School Board, and private school administrative files. The study design, data collection plan, instruments, and levels of burden are consistent with forms clearance packages approved by OMB for the previous evaluation of this program (#1850–0800).

The Scholarships and Opportunities for Results (SOAR) Act H.R. 1473 (Pub. L.112–10), signed into law on April 15, 2011, reauthorized the DC School Choice Incentive Act and provided for a five-year continuation of a school choice program for low-income residents of Washington, DC. The program, still titled the Opportunity Scholarship Program or OSP, now provides scholarships to enable low-income elementary and secondary students to attend private schools in the District of Columbia in lieu of the public schools already available to them. The OSP is operated under a grant from the U.S. Department of Education (ED) to the DC Children and Youth Investment Corporation (the Trust).

The reauthorization once again stipulated that an evaluation of the program be conducted ''using the strongest possible research design for determining the effectiveness'' of the program. ED awarded a contract to Westat, and its research partners, Pemberton Research and the University of California at San Diego to: (1) provide technical assistance to the program operator, particularly with respect to the design and conduct of the lotteries of applicants, and (2) conduct an evaluation of the impacts of the program.

The foundation of the evaluation will be a randomized control trial (RCT) comparing outcomes of eligible applicants (students and their parents) assigned by lottery to receive or not receive a scholarship. This design is consistent with the requirement for a rigorous evaluation as well as the need to fairly allocate the scholarships if the program is oversubscribed. Because the law also specified other kinds of comparisons and analyses, the planned evaluation study includes both quantitative and qualitative components.

Dated: February 11, 2013.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–03531 Filed 2–14–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2012–ICCD–0068]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and approval; Comment Request; Indian Education Professional Development Grants Program: GPRA and Service Payback Data Collection

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing; an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before March 18, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2012–ICCD–0068 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Room 2E117, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Indian Education Professional Development Grants Program: GPRA and Service Payback Data Collection.

OMB Control Number: 1810–0698.

Type of Review: Extension without change of an existing collection of information.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 2,076.

Total Estimated Number of Annual Burden Hours: 2,250.

Abstract: The Office of Indian Education Professional Development (OIE PD) Grants program wishes to implement (1) a Semi-Annual Participant Report (SAPR), (2) a Participant Follow-Up Protocol, and (3) an Employment Verification survey. The information collected through the SAPR, the Participant Follow-Up Protocol, and the Employment Verification Form is necessary to (1) assess the performance of the IE PD program on its Government Performance Results Act (GPRA) measures, (2) determine if IE PD participants are fulfilling the terms of their service payback requirements, and (3) provide project-monitoring and compliance information to IE PD Grants program staff.

Dated: February 11, 2013.

Tomakie Washington,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–03530 Filed 2–14–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0012]

Agency Information Collection Activities; Comment Request; Federal Perkins Loan Program Regulations

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection of a previously approved information collection.

DATES: Interested persons are invited to submit comments on or before April 16, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://*

www.regulations.gov by selecting Docket ID number ED–2013–ICCD–0012 or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW, LBJ, Room 2E103, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov*. Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Federal Perkins Loan Program Regulations.

OMB Control Number: 1845–0023.

Type of Review: an extension of an existing information collection of a previously approved information collection.

Respondents/Affected Public: Individuals or households, State, Local, or Tribal Governments, Private Sector.

Total Estimated Number of Annual Responses: 23,488,137.

Total Estimated Number of Annual Burden Hours: 607,752.

Abstract: Institutions of higher education make Perkins loans. Information is necessary in order to monitor a school's due diligence in its contact with the borrower regarding repayment, billing and collections, reimbursement to its Perkins loan revolving fund, rehabilitation of defaulted loans as well as institutions use of third party collections. This extension is a request for approval of reporting and record-keeping requirements contained in the regulations related to the administrative requirements of the Perkins Loan Program.

Dated: February 11, 2013.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–03532 Filed 2–14–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Efficiency and Renewable Energy

Meetings: State Energy Advisory Board

AGENCY: Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a live open meeting of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: March 12, 2013, 9:00 a.m.–5:00 p.m.

March 13, 2013, 9:00 a.m.–5:00 p.m.

ADDRESSES: Double Tree by Hilton Hotel Washington, DC—Crystal City (in the Jefferson Room), 300 Army Navy Drive, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Gil Sperling, STEAB's Designated Federal Officer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW, Washington, DC 20585.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To provide advice and make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Receive in person updates and reviews of accomplishment of STEAB's Subcommittee and Task Forces, meet with members of DOE's Office of Energy Efficiency and Renewable Energy (EERE), discuss new initiatives and technologies generated by the EERE program areas, explore energy financing options, meet with senior-level EERE staff to discuss strategic planning opportunities, and update to the Board on routine business matters and other topics of interest.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gil Sperling at the address listed above. Requests to make oral comments must be received five days prior to the meeting; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 90 days on the STEAB Web site, *www.steab.org.*

Issued at Washington, DC, on February 8, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–03433 Filed 2–14–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC13–1–000]

Commission Information Collection Activities (FERC–592); Comment Request

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1)(D), the Federal Energy Regulatory Commission (Commission or FERC) is submitting the information collection, FERC–592 (Standards of Conduct for Transmission Provider; and Marketing Affiliates of Interstate Pipelines), to the Office of Management and Budget (OMB) for review of the

information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (77 FR 70746, 11/27/2012) requesting public comments. FERC received no comments on the FERC–592 and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due by March 18, 2013.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0157, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–4718.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission, identified by the Docket No. IC13–1–000, by either of the following methods:

- *eFiling at Commission's Web Site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–592 (Standards of Conduct for Transmission Providers; and Marketing Affiliates of Interstate Pipelines).

OMB Control No.: 1902–0157.

Type of Request: Three-year extension of the FERC–592 information collection requirements with no changes to the reporting requirements.

Abstract: The Commission uses the information maintained and posted by the respondents to monitor the pipeline's transportation, sales, and storage activities for its marketing affiliate to deter undue discrimination by pipeline companies in favor of their marketing affiliates. Non-affiliated shippers and other entities (e.g. state commissions) also use information to determine whether they have been harmed by affiliate preference and to prepare evidence for proceedings following the filing of a complaint.

18 CFR Part 358 (Standards of Conduct)

Respondents maintain and provide the information required by Part 358 on their internet Web sites. When the Commission requires a pipeline to post information on its Web site following a disclosure of non-public information to its marketing affiliate, non-affiliated shippers obtain comparable access to the non-public transportation information, which allows them to compete with marketing affiliates on a more equal basis.

18 CFR 250.16, and the FERC–592 log/format

This form (log/format) provides the electronic formats for maintaining information on discounted transportation transactions and capacity allocation to support monitoring of activities of interstate pipeline marketing affiliates. Commission staff considers discounts given to shippers in litigated rate cases.

Without this information collection:

- The Commission would be unable to effectively monitor whether pipelines are giving discriminatory preference to their marketing affiliates; and
- Non-affiliated shippers and state commissions and others would be unable to determine if they have been harmed by affiliate preference or prepare evidence for proceedings following the filing of a complaint.

Type of Respondents: Natural Gas Pipelines.

Estimate of Annual Burden [1]*:* The Commission estimates the total Public Reporting Burden for this information collection as:

FERC–592—STANDARDS OF CONDUCT FOR TRANSMISSION PROVIDERS; AND MARKETING AFFILIATES OF INTERSTATE PIPELINES

Number of respondents (A)	Number of responses per respondent (B)	Total number of responses (A)x(B)=(C)	Average burden hours per response (D)	Estimated total annual burden (C)x(D)
85	1	85	116.62	9,913

The total estimated annual cost burden to respondents is $684,092 [9,913 hours ÷ 2080 [2] hours per year = 4.76586 * $143,540/year [3] = $684,092]

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: February 8, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–03501 Filed 2–14–13; 8:45 am]

BILLING CODE 6717–01–P

[1] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[2] 2080 hours/year = 40 hours/week * 52 weeks/year.

[3] Average annual salary plus benefits per employee in 2012.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EG13–6–000, et al]

North Sky River Energy, LLC, et al; Notice of Effectiveness of Exempt Wholesale Generator Status

	Docket Nos.
North Sky River Energy, LLC	EG13–6–000
Black Bear SO, LLC	EG13–7–000
Black Bear Development Holdings, LLC	EG13–8–000
Shiloh IV Lessee, LLC	EG13–9–000
Grand Ridge Energy IV LLC	EG13–10–000

Take notice that during the month of January 2013, the status of the above-captioned entities as Exempt Wholesale Generators Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Dated: February 8, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–03500 Filed 2–14–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8657–064]

Virginia Hydrogeneration and Historical Society's, L.C.; Notice of Termination of License by Implied Surrender and Soliciting Comments, Protests, and Motions To Intervene

Take notice that the following hydroelectric proceeding has been initiated by the Commission:

a. *Type of Proceeding:* Termination of license by implied surrender.

b. *Project No.:* 8657–064.

c. *Date Initiated:* February 8, 2013.

d. *Licensee:* Virginia Hydrogeneration and Historical Society's, L.C.

e. *Name and Location of Project:* The Harvell Hydroelectric Project is located on Appomattox River in Dinwiddie and Chesterfield counties, Virginia.

f. *Filed Pursuant to:* 18 CFR 6.4.

g. *Licensee Contact Information:* C.D.L. Perkins c/o Bryan Brothers; 1802 Bayberry Court, Suite 301; Richmond, VA 23226.

h. *FERC Contact:* Krista Sakallaris (202) 502–6302 or *Krista.Sakallaris@ferc.gov.*

i. Deadline for filing comments, protests, and motions to intervene is 30 days from the issuance date of this notice. Please file your submittal electronically via the Internet (eFiling) in lieu of paper. Please refer to the instructions on the Commission's Web site under *http://www.ferc.gov/docs-filing/efiling.asp* and filing instructions in the Commission's Regulations at 18 CFR section 385.2001(a)(1)(iii).[1] To assist you with eFilings you should refer to the submission guidelines document at *http://www.ferc.gov/help/submission-guide/user-guide.pdf.* In addition, certain filing requirements have statutory or regulatory formatting and other instructions. You should refer to a list of these ''qualified documents'' at *http://www.ferc.gov/docs-filing/efiling/filing.pdf.* You must include your name and contact information at the end of your comments. Please include the project number (P–8657–064) on any documents or motions filed. The Commission strongly encourages electronic filings; otherwise, you should submit an original and seven copies of its submittal to the following address: The Secretary, Federal Energy Regulatory Commission, Mail Code: DHAC, PJ–12, 888 First Street NE., Washington, DC 20426

j. *Description of Existing Facilities:* The inoperative project consists of the following existing facilities: (a) A 400-foot-long concrete dam, varying in height from 7 feet to 9 feet; (b) a reservoir with a surface area of 7 acres and a storage capacity of 49 acre-feet at powerpool elevation of 12.63 feet m.s.l.; (c) a powerhouse, located at the dam, containing one generating unit rated at 150 kW; (d) a 170-foot-long canal to the powerhouse located east of the dam; (e) a powerhouse, located east of the dam, containing two generating units rated at 300 kW each; (f) a tailrace at the powerhouse east of the dam; (g) a transmission system which includes the 2.3-kV generator leads, the 270-foot-long, 2.3-kV transmission line from the powerhouse at the dam, and the 2.3-kV leads and the 2.3-kV bus at the powerhouse east of the dam, the transformer, and the 130-foot-long, 13.2-kV transmission line; and (h) appurtenant facilities.

k. *Description of Proceeding:* The licensee is in violation of Standard Article 16 of its license, which was granted on December 1, 1987 (41 FERC ¶ 62,193). The Commission's regulations, 18 CFR 6.4, provides, among other things, that the Commission may terminate a project by implied surrender if the licensee abandons or discontinues good faith operation of the project for a period of three years. The project stopped operating prior to an August 2006 safety inspection.

The most recent correspondence received from this licensee, was a Joint Offer of Settlement, dated July 22, 2005. The correspondence stated that the licensee had disconnected all electrical generating equipment from the power grid and made reasonable efforts to secure the site. The Commission did not act on the filing due to the inability to resolve issues associated with terminating the license. Since then, Commission staff inspected the project in August 2006 and again in September 2009. A project representative was not present during the inspections, and the project was locked and appeared abandoned.

l. This notice is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the Docket number (P–8657–064) excluding the last three digits in the docket number field to access the notice. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular proceeding.

o. *Filing and Service of Responsive Documents*—Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE,'' as applicable; (2) set forth in the heading the project number of the proceeding to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting,

[1] *http://www.ferc.gov/legal/fed-sta.asp* Select the link for Code of Federal Regulations and navigate to § 385.2001.

protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, protests or motions to intervene must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, protests, or motions to intervene should relate to project works which are the subject of the termination of license. A copy of any protest or motion to intervene must be served upon each representative of the Licensee specified in item g above. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this notice must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described proceeding. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

Dated: February 8, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–03497 Filed 2–14–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3267–015]

North Country Community College Foundation, Inc., Chasm Hydro, Inc.; Notice of Application for Transfer of License, and Soliciting Comments and Motions To Intervene

On January 31, 2013, North Country Community College Foundation, Inc. (transferor) and Chasm Hydro, Inc. (transferee) filed an application for the transfer of license for the Ballard Mill Project (FERC No. 3267), located on the Salmon River in Franklin County, New York.

Applicants seek Commission approval to transfer the license for the Ballard Mill Project from the transferor to the transferee.

Applicants' Contact: Transferor: Ms. Diana Fortune, Director of Development and Ms. Susanna R. Cantwell, President, North Country Community College Foundation, Inc., 23 Santanoni Avenue, P.O. Box 89, Saranac Lake, NY 12983, telephone (518) 354–5261. Transferee: Mr. John Dowd, President, Chasm Hydro, Inc., 7063 State Route 374, Chateaugay, NY 12920, telephone (518) 497–3111.

FERC Contact: Patricia W. Gillis (202) 502–8735, *patricia.gillis@ferc.gov.*

Deadline for filing comments and motions to intervene: 30 days from the issuance date of this notice. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1) and the instructions on the Commission's Web site under *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original plus seven copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. More information about this project can be viewed or printed on the eLibrary link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–3267) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Dated: February 8, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–03499 Filed 2–14–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR13–14–000]

Western Refining Pipeline Company; Notice for Temporary Waiver of Filing and Reporting Requirements

On January 29, 2013, Western Refining Pipeline Company (Western) filed a Request for Temporary Waiver of the Tariff Filing and Reporting Requirements under sections 6 and 20 of the Interstate Commerce Act and related Commission regulations (18 CFR parts 341 and 357 (2012). Western plans to construct and operate new pipeline facilities for the transportation of crude oil from tankage facilities located in Lea and Eddy Counties, New Mexico (New Mexico Facilities) to downstream markets.

Any person desiring to intervene or to protest in this proceeding must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Friday, February 15, 2013.

Dated: February 8, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–03498 Filed 2–14–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0041 FRL—9781–2]

Proposed Information Collection Request; Comment Request; RadNet (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''RadNet (Renewal)'' (EPA ICR No. 0877.11, OMB Control No. 2060–0015) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through July 31, 2013. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before April 16, 2013.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2003–0041 referencing the Docket ID numbers provided for each item in the text, online using www.regulations.gov (our preferred method), by email to a-and-r-Docket and Information Center, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Charles M. Petko, Office of Radiation and Indoor Air (ORIA), National Air and Radiation Environmental Laboratory (NAREL), 540 South Morris Avenue, Montgomery, Alabama 36115–2601. Tel: 334–270–3411; fax number: 334–270–3454; email address: *petko.charles@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: RadNet is a national network of stations collecting sampling media that include air, precipitation, drinking water, and milk. Samples are sent to EPA's National Air and Radiation Environmental Laboratory (NAREL) in Montgomery, Alabama, where they are analyzed for radioactivity. RadNet provides emergency response/homeland security and ambient monitoring information on levels of environmental radiation across the nation. All stations, usually operated by state and local personnel, participate in RadNet voluntarily. Station operators complete information forms that accompany the samples. The forms request descriptive information pertaining to sample location, e.g., sample type, sample location, length of sampling period, and volume represented.

Form Numbers: 5900–23, 5900–24, 5900–25, 5900–26, 5900–27, 5900–28, 5900–29, 5900–30, 5900–31.

Respondents/affected entities: Volunteer collectors of milk, air, precipitation, and drinking water samples to support EPA's national environmental radiation monitoring network known as RadNet.

Respondent's obligation to respond: voluntary.

Estimated number of respondents: 275 (total).

Frequency of response: Frequency varies according to medium being sampled: milk, quarterly; drinking water, quarterly; rain (precipitation), as events occur; and air, twice weekly.

Total estimated burden: 9,333 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $480,073 in labor costs and no capital or O&M.

Changes in Estimates: There is an anticipated decrease in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease will result from the installation of new air monitors, which require less time from the station operators. Specific estimates of decreased burden are in progress. The new equipment was installed as a result of EPA's decision to upgrade existing air monitoring equipment.

Dated: February 5, 2013.

John Griggs,

Director, National Analytical Radiation Environmental Laboratory, EPA Office of Radiation and Indoor Air.

[FR Doc. 2013–03601 Filed 2–14–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9007–6]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 02/04/2013 Through 02/08/2013

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20130026, Final EIS, USFWS, TX, Edwards Aquifer Recovery Implementation Program Habitat Conservation Plan, Review Period Ends: 03/18/2013, Contact: Adam Zerrenner 512–490–0057.

EIS No. 20130027, Final EIS, USFWS, AK, Izembek National Wildlife National Wildlife Refuge Land Exchange/Road Corridor, Review Period Ends: 03/18/2013, Contact: Stephanie Brady 907–306–7448.

EIS No. 20130028, Draft EIS, AFS, AZ, Programmatic—Apache-Sitgreaves National Forests Land Management Plan, Comment Period Ends: 05/17/2013, Contact: Michelle Davalos 928–333–6334.

EIS No. 20130029, Draft EIS, NPS, 00, Cottonwood Cove and Katherine Landing Draft Development Concept Plans, Lake Mead National Recreation Area, NV, AZ, Comment Period Ends: 04/16/2013, Contact: Greg Jarvis 303–969–2263.

EIS No. 20130030, Final EIS, USFS, OR, Mt. Bachelor Ski Area Improvements Project, Review Period Ends: 03/18/2013, Contact: Amy Tinderholt 541–383–4708.

EIS No. 20130031, Draft EIS, USN, CA, U.S. Navy F–35C West Coast Homebasing, Comment Period Ends: 04/22/2013, Contact: Amy Kelley 619–532–2799.

EIS No. 20130032, Final EIS, BLM, CA, Alta East Wind Project, Proposed Plan Amendment, Comment Period Ends: 03/18/2013, Contact: Jeffery K. Childers 951–697–5308.

EIS No. 20130033, Draft Supplement, USFS, CA, Southern California National Forests Land Management Plan Amendment, Comment Period Ends: 05/17/2013, Contact: Robert Hawkins 916–849–8037.

Dated: February 12, 2013.

Dawn Roberts,

Management Analyst, Office of Federal Activities.

[FR Doc. 2013–03596 Filed 2–14–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9780–2]

Integrated Science Assessment for Ozone and Related Photochemical Oxidants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The EPA is announcing the availability of a final document titled, ''Integrated Science Assessment for Ozone and Related Photochemical Oxidants'' (EPA/600/R–10/076F). The document was prepared by the National Center for Environmental Assessment within EPA's Office of Research and Development as part of the review of the national ambient air quality standards (NAAQS) for ozone.

DATES: The document will be available on February 15, 2013.

ADDRESSES: The ''Integrated Science Assessment for Ozone and Related Photochemical Oxidants'' will be made available primarily through the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of CD–ROM or paper copies will be available. Contact Ms. Marieka Boyd by phone (919–541–0031), fax (919–541–5078), or email (*boyd.marieka@epa.gov*) to request either of these, and please provide your name, your mailing address, and the document title, ''Integrated Science Assessment for Ozone and Related Photochemical Oxidants'' (EPA/600/R–10/076F) to facilitate processing of your request.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Dr. James Brown, NCEA; telephone: 919–541–0765; facsimile: 919–541–1818; or email: *Brown.James@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 108(a) of the Clean Air Act directs the Administrator to identify certain pollutants which, among other things, ''cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare'' and to issue air quality criteria for them. These air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air * * *.'' Under section 109 of the Act, EPA is then to establish NAAQS for each pollutant for which EPA has issued criteria. Section 109(d) of the Act subsequently requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health or welfare. EPA is also to periodically review and, if appropriate, revise the NAAQS, based on the revised air quality criteria.

Ozone (O_3) is one of six principal (or ''criteria'') pollutants for which EPA has established NAAQS. Periodically, EPA reviews the scientific basis for these standards by preparing an Integrated Science Assessment (ISA) (formerly called an Air Quality Criteria Document). The ISA provides a concise review, synthesis, and evaluation of the most policy-relevant science to serve as a scientific foundation for the review of the NAAQS. The Clean Air Scientific Advisory Committee (CASAC), an independent science advisory committee whose existence and whose review and advisory functions are mandated by Section 109(d)(2) of the Clean Air Act, is charged (among other things) with independent scientific review of EPA's air quality criteria.

On September 29, 2008 (73 FR 56581), EPA formally initiated its current review of the air quality criteria for ozone, requesting the submission of recent scientific information on specified topics. A draft of EPA's ''Integrated Review Plan for the Ozone National Ambient Air Quality Standards Review'' (EPA/452/P–09/001) was made available in September 2009 for public comment and was discussed by the CASAC Ozone Review Panel (CASAC panel) via a publicly accessible teleconference consultation on November 13, 2009 (74 FR 54562). In August 2010, EPA held a workshop to discuss, with invited scientific experts, initial draft materials prepared in the development of the ISA (75 FR 42085). The first external review draft ISA for Ozone and Related Photochemical Oxidants was released on March 4, 2011 (*http://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=217463).* The CASAC panel met at a public meeting on May 19, 2011, to review the draft ISA (76 FR 23809). Subsequently, on August 10, 2011, the CASAC panel provided a consensus letter for their review to the Administrator of the EPA (*http://yosemite.epa.gov/sab/sabproduct.nsf/4620a620d0120f93852572410080d786/45A59F1BC8912FEE852578E80066021C/$File/EPA-CASAC-11-009-unsigned.pdf*). The second external review draft ISA for Ozone and Related Photochemical Oxidants was released on September 30, 2011 (*http://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=226363*). The CASAC panel met at a public meeting on January 9, 2012, to review the draft ISA (76 FR 76725). Subsequently, on March 13, 2012, the CASAC panel provided a consensus letter for their review to the Administrator of the EPA (*http://yosemite.epa.gov/sab/sabproduct.nsf/4620a620d0120f93852572410080d786/1336B2B88034AEB6852579C0007070CA/$File/EPA-CASAC-12-004-unsigned.pdf*).

The third external review draft ISA for Ozone and Related Photochemical Oxidants was released on June 19, 2012 (*http://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=242490).* The CASAC panel met at a public meeting on September 11, 2012, to review the draft ISA (77 FR 46755). Subsequently, on November 14, 2012, the CASAC panel provided a consensus letter for their review to the Administrator of the EPA (*http://yosemite.epa.gov/sab/sabproduct.nsf/4620a620d0120f93852572410080d786/60C2732674A5EEF385257AB6007274B9/$File/EPA-CASAC-13-001+unsigned.pdf*).

EPA has considered comments by the CASAC panel and by the public in preparing this final ISA.

Dated: January 24, 2013.

Debra B. Walsh,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 2013–03471 Filed 2–14–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2013–0067; FRL–9378–2]

Kasugamycin; Receipt of Application for Emergency Exemption for Use on Apples in Michigan, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Michigan Department of Agriculture to use the pesticide kasugamycin (CAS No. 6980–18–3) to treat up to 10,000 acres of apples to control fire blight. The applicant proposes the use of a new chemical which has not been registered by EPA. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before March 4, 2013.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2013–0067, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Keri Grinstead, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8373; fax number: (703) 605–0781; email address: *grinstead.keri@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

II. What action is the Agency taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the EPA Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the EPA Administrator determines that emergency conditions exist which require the exemption. Michigan Department of Agriculture has requested the EPA Administrator to issue a specific exemption for the use of kasugamycin on apples to control fire blight. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the applicant asserts that kasugamycin is needed to control streptomycin-resistant strains of *Erwinia amylovora,* the causal pathogen of fire blight, due to the lack of available alternatives and effective control practices; and significant economic losses will occur if this pest is not controlled.

The applicant proposes to make no more than three applications of Kasumin 2L on not more that 10,000 acres of apples between April 1 and May 31, 2013, in Antrim, Berrien, Cass, Grand Traverse, Ionia, Kent, Leelanau, Montcalm, Newaygo, Oceana, Ottawa, and Van Buren counties. As currently proposed, the maximum amount of product to be applied would be 30,000 gallons.

This notice does not constitute a decision by EPA on the application itself. The regulations governing FIFRA section 18 requires publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient) which has not been registered by EPA. The notice provides an opportunity for public comment on the application. The Agency will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the Michigan Department of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 8, 2013.

Daniel J. Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2013–03592 Filed 2–14–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–1196; FRL–9781–1]

Recent Postings of Broadly Applicable Alternative Test Methods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the broadly applicable alternative test method approval decisions the EPA has made under and in support of New Source Performance Standards (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAP) under the Clean Air Act (CAA) in 2012.

FOR FURTHER INFORMATION CONTACT: An electronic copy of each alternative test method approval document is available on the EPA's Web site at *www.epa.gov/ttn/emc/approalt.html.* For questions about this notice, contact Ms. Lula H. Melton, Air Quality Assessment Division, Office of Air Quality Planning and Standards (E143–02), Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: 919–541–2910; fax number: 919–541–0516; email address: *melton.lula@epa.gov.* For technical questions about individual alternative test method decisions, refer to the contact person identified in the individual approval documents.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this notice apply to me?

This notice will be of interest to entities regulated under 40 Code of Federal Regulations (CFR) parts 60, 61, and 63, state, local, and tribal agencies, and the EPA Regional Offices responsible for implementation and enforcement of regulations under 40 CFR parts 60, 61, and 63.

B. How can I get copies of this information?

You may access copies of the broadly applicable alternative test method approval documents from the EPA's Web site at *www.epa.gov/ttn/emc/approalt.html.*

II. Background

Broadly applicable alternative test method approval decisions made by the EPA in 2012 under the NSPS, 40 CFR part 60 and the NESHAP, and 40 CFR parts 61 and 63 are identified in this notice (see Table 1). Source owners and operators may voluntarily use these broadly applicable alternative test methods subject to their specific applicability. Use of these broadly applicable alternative test methods does not change the applicable emission standards.

As explained in a previous **Federal Register** notice published at 72 FR 4257 (January 30, 2007) and found on the EPA's Web site at *www.epa.gov/ttn/emc/approalt.html,* the EPA Administrator has the authority to approve the use of alternative test methods to comply with requirements under 40 CFR parts 60, 61, and 63. This authority is found in sections 60.8(b)(3), 61.13(h)(1)(ii), and 63.7(e)(2)(ii). In the past, we have performed thorough technical reviews of numerous requests for alternatives and modifications to test methods and procedures. Based on these reviews, we have often found that these changes or alternatives would be equally valid and appropriate to apply to other sources within a particular class, category, or subcategory. Consequently, we have concluded that, where a method modification or an alternative method is clearly broadly applicable to a class, category, or subcategory of sources, it is both more equitable and efficient to approve its use for all appropriate sources and situations at the same time.

It is important to clarify that alternative methods are not mandatory but permissive. Sources are not required to employ such a method but may choose to do so in appropriate cases. Source owners or operators should review the specific broadly applicable alternative method approval decision on the EPA's Web site at *www.epa.gov/ttn/emc/approalt.html* before electing to employ it. As per 63.7(f)(5), by electing to use an alternative method for 40 CFR part 63 standards, the source owner or operator must continue to use the alternative method until approved otherwise.

The criteria for approval and procedures for submission and review of broadly applicable alternative test methods are outlined at 72 FR 4257 (January 30, 2007). We will continue to announce approvals for broadly applicable alternative test methods on the EPA's Web site at *www.epa.gov/ttn/emc/approalt.html* and annually publish a notice that summarizes approvals for broadly applicable alternative test methods.

This notice comprises a summary of seven such approval documents added to our Technology Transfer Network from January 1, 2012, through December 31, 2012. The alternative method decision letter/memo number, the reference method affected, sources allowed to use this alternative, and the modification or alternative method allowed are summarized in Table 1 of this notice. Please refer to the complete copies of these approval documents available from the EPA's Web site at *www.epa.gov/ttn/emc/approalt.html* as Table 1 serves only as a brief summary of the broadly applicable alternative test methods. In addition to alternative decisions listed in Table 1, we received comments and updated Alternative-082, which was approved the previous year in 2011. This alternative approval letter can also be viewed at *www.epa.gov/ttn/emc/approalt.html.*

If you are aware of reasons why a particular alternative test method approval that we issued should not be broadly applicable, we request that you make us aware of the reasons in writing, and we will revisit the broad approval. Any objection to a broadly applicable alternative test method, as well as the resolution of that objection, will be announced on the EPA's Web site at *www.epa.gov/ttn/emc/approalt.html* and in the subsequent **Federal Register** notice. If we decide to retract a broadly applicable test method, we would continue to grant case-by-case approvals, as appropriate, and would (as states, local and tribal agencies and the EPA Regional Offices should) consider the need for an appropriate transition period for users either to request case-by-case approval or to transition to an approved method.

Dated: February 8, 2013.

Mary E. Henigin,

Acting Director, Office of Air Quality Planning and Standards.

TABLE 1—APPROVED ALTERNATIVE TEST METHODS AND MODIFICATIONS TO TEST METHODS REFERENCED IN OR PUBLISHED UNDER APPENDICES IN 40 CFR PARTS 60, 61, AND 63 MADE BETWEEN JANUARY 2012 AND DECEMBER 2012

Alternative method decision letter/ memo No.	As an alternative or modification to . . .	For . . .	You may . . .
ALT–091	Method 4-Determination of Moisture Content in Stack Gases.	Sources subject to 40 CFR part 63, subpart UUUUU-National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units.	Use alternative procedures in lieu of Method 4 to determine the moisture content of the stack gas during low emitting EGU (LEE)testing for mercury emissions.
ALT–092	Method 7E-Determination of Nitrogen Oxides Emissions from Stationary Sources (Instrumental Analyzer Procedure).	Natural gas burning internal combustion engines subject to 40 CFR part 60, subpart JJJJ-Standards of Performance for Stationary Spark Ignition Internal Combustion Engines.	Use a single 10 ppm (or less) calibration gas in lieu of a three-point calibration for determination of NO_2 when the NO_2 emissions remain below 10 ppm.
ALT–093	Method 5-Determination of Particulate Matter Emissions from Stationary Sources.	Sources subject to 40 CFR part 63, subpart RRR-National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.	Use alternative test procedures for batch processes subject to 40 CFR 63.1511(b)(3) that are required to be sampled using an isokinetic train.
ALT–094	Measure total sulfides using an H_2S and CS_2 CEMS.	Sources subject to 40 CFR part 63, subpart UUUU-National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing.	Use a sample conditioning, sample conversion, and SO_2 CEMS in place of H_2S and CS_2 CEMS to measure total sulfides at process vents.
ALT–095	Calculating the coke burn-off rate for compliance with 40 CFR 60.105(c).	Sources subject to 40 CFR part 60, subpart J-Standards of Performance for Petroleum Refineries.	Use the flow rate CEMS and Equation 2 of 40 CFR 63.1573(a)(2).
ALT–096	Method 25A-Determination of Total Gaseous Organic Concentration Using a Flame Ionization Analyzer and Method 18-Measurment of Gaseous Organic Compound Emissions by Gas Chromatography.	Sources subject to 40 CFR part 60, subpart JJJJ-Standards of Performance for Stationary Spark Ignition Internal Combustion Engines.	Use the TECO–551 to measure methane and NMOC.
ALT–097	Method 25A-Determination of Total Gaseous Organic Concentration Using a Flame Ionization Analyzer and Method 18-Measurment of Gaseous Organic Compound Emissions by Gas Chromatography.	Bypass flare exhaust emissions subject to 40 CFR part 60, subpart WWW-Standards of Performance for Municipal Solid Waste Landfills.	Use GC and GC back-flush procedures to separate and measure methane and NMOC.

Source owners or operators should review the specific broadly applicable alternative method approval letter on the EPA's Web site at *www.epa.gov/ttn/emc/approalt.html* before electing to employ it.

[FR Doc. 2013–03598 Filed 2–14–13; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of Information Collection—Revised: Demographic Information on Applicants for Federal Employment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, the Equal Employment Opportunity Commission (Commission or EEOC) announces that it intends to revise a Commission form (Demographic Information on Applicants, OMB No. 3046–0046) to include disability status data.

DATES: Written comments on this notice must be submitted on or before April 16, 2013.

ADDRESSES: Comments should be sent to the Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street, NE., Washington, DC 20507. As a convenience to commenters, the Executive Secretariat will accept comments totaling six or fewer pages by facsimile (''FAX'') machine. This limitation is necessary to assure access to the equipment. The telephone number of the fax receiver is (202) 663–4114. (This is not a toll-free number). Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TTD). (These are not toll-free telephone numbers.) Instead of sending written comments to the EEOC, you may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments. All comments received through this portal will be posted without change, including any personal information you provide. Copies of comments submitted by the public to the EEOC directly or through the Federal eRulemaking Portal will be available for review, by advance appointment only, at the Commission's library between the hours of 9:00 a.m. and 5:00 p.m. or can be reviewed at *http://www.regulations.gov.* To schedule an appointment to inspect the comments at EEOC's library, contact the library staff at (202) 663–4630 (voice) or (202) 663–4641 (TTY). (These are not toll-free numbers.)

FOR FURTHER INFORMATION CONTACT: Barbara Dougherty, Federal Sector Programs, Office of Federal Operations, 131 M Street NE., Washington, DC 20507, (202) 663–4770 (voice); (202) 663–4593 (TTY).

SUPPLEMENTARY INFORMATION: On July 26, 2010, President Obama issued Executive Order 13548, which directs Executive departments and agencies (hereafter ''agencies'') to improve their efforts to employ Federal workers with disabilities through increased recruitment, hiring, and retention of these individuals. OPM, in consultation with the White House (including the Office of Management and Budget (OMB)), the Department of Labor (DOL), and the EEOC has developed, as required by the EO 13548, model recruitment and hiring strategies for agencies to use to increase their employment of individuals with disabilities. (*http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=3228#Attachment1*) The strategies include collecting, maintaining, and analyzing applicant flow data and examining existing recruitment programs and hiring practices to identify and eliminate any barriers to recruiting/hiring individuals with disabilities and, in particular, individuals with targeted disabilities.

This Notice concerns revising the form (OMB No. 3046–0046) for the use by federal agencies in gathering data on the race, ethnicity, and sex of job applicants. This form is used by EEOC and other agencies to gauge progress and trends over time with respect to equal employment opportunity goals. The revision would add disability status of applicants to the collection, thereby allowing the agencies and EEOC to track progress toward meeting the recruitment and hiring strategies developed pursuant to EO 13548. The race and ethnicity categories in this form are consistent with the standards set by the Office of Management and Budget .[1] The questions on disability and medical impairments are designed to allow federal agencies and the EEOC to determine the percentage of applicants to Federal jobs who might be considered ''individuals with disabilities'' under various approaches to defining the term. Among other things, the disability questions are designed to analyze the frequency with which people with ''targeted disabilities'' apply for positions with an agency, compare the percentage of applicants with functional disabilities to the percentage of working age people with such disabilities as recorded by the Census Bureau, and examine the number of applicants with medical impairments consistent with the Americans with Disabilities Act Amendments Act and the Rehabilitation Act.

Pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and OMB regulation 5 CFR 1320.8(d)(1), the Commission solicits public comment on revising its form for use by federal agencies in gathering demographic information on applicants for federal employment. Comments are particularly invited on whether this collection of information will enable the Commission and federal agencies to:

(1) Evaluate whether the proposed data collection tool will have practical utility by enabling a federal agency to determine whether recruitment activities are effectively reaching all segments of the relevant labor pool in compliance with the laws enforced by the Commission and whether the agency's selection procedures allow all applicants to compete on a level playing field regardless of race, national origin, sex or disability status;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on applicants for federal employees who choose to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

Collection Title: Demographic Information on Federal Job Applicants.

OMB Control No.: 3046–0046 .

Description of Affected Public: Individuals submitting applications for federal employment.

Number of Annual Responses: 5,800.

Estimated Time per Respondent: 3 minutes.

Total Annual Burden Hours (5,800 × 3)/60 = 290.

Annual Federal Cost: None.

Abstract: Under section 717 of Title VII and 501 of the Rehabilitation Act, the Commission is charged with reviewing and approving federal agencies plans to affirmatively address potential discrimination before it occurs. Pursuant to such oversight responsibilities, the Commission has established systems to monitor compliance with Title VII and the Rehabilitation Act by requiring federal agencies to evaluate their employment practices through the collection and analysis of data on the race, national origin, sex and disability status of applicants for both permanent and temporary employment.

Several federal agencies (or components of such agencies) have previously obtained separate OMB approval for the use of forms collecting data on the race, national origin, sex, and disability status of applicants. In order to avoid unnecessary duplication of effort and a proliferation of forms, the EEOC seeks approval for the use of a common form to be used by all federal agencies.

Response by applicants is optional. The information obtained will be used by federal agencies only for evaluating whether an agency's recruitment activities are effectively reaching all segments of the relevant labor pool, to gauge progress and trends over time with respect to equal opportunity goals, and to track progress toward meeting the recruitment and hiring strategies developed pursuant to EO 13548. The voluntary responses are treated in a highly confidential and anonymous manner, are not shared with those involved in the selection process or the supervisor (if the person is hired) and will not be placed in the employees' personnel file. The information is not provided to any panel rating the applications, to selecting officials, to anyone who can affect the application or to the public. Rather, the information is used in summary form to determine trends over many selections within a given occupational or organization area. No information from the form is entered into an official personnel file.

Burden Statement: Because of the predominant use of online application systems, which require only pointing and clicking on the selected responses, and because the form requests only eight questions regarding basic information, the EEOC estimates that an applicant can complete the form in approximately 3 minutes or less. Based on past experience, we expect that 5,800

[1] Office of Management and Budget. Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, **Federal Register**: 62: No.210, October 30. 1997, available at: *http://www.whitehouse.gov/omb/fedreg_1997standards/.*

applicants will choose to complete the form.

Once OMB approves the use of this common form, federal agencies may request OMB approval to use this common form without having to publish notices and request public comments for 60 and 30 days. Each agency must account for the burden associated with their use of the common form.

Dated: February 11, 2013.

For the Commission.

Jacqueline A. Berrien,

Chair.

BILLING CODE 6570–01–P

DEMOGRAPHIC INFORMATION ON APPLICANTS

OMB No.:

Expiration Date:

Vacancy Announcement No.:
Position Title:

YOUR PRIVACY IS PROTECTED

This information is used to determine if our equal employment opportunity efforts are reaching all segments of the population, consistent with Federal equal employment opportunity laws. Responses to these questions are voluntary. Your responses are not shown to the panel rating the applications, to the selecting official, or to anyone else who can affect your application. This form will not be placed in your Personnel file and will be kept private to the extent permitted by law.

Completion of this form is voluntary and a refusal to provide the information will not subject you to any adverse treatment.

Thank you for helping us to provide better service.

1. How did you learn about this position? (Check One):

- ☐ Agency Internet Site recruitment
- ☐ Private Employment Web Site
- ☐ Other Internet Site
- ☐ Job Fair
- ☐ Newspaper or magazine
- ☐ Agency or other Federal government on campus
- ☐ School or college counselor or other official
- ☐ Friend or relative working for this agency .
- ☐ Private Employment Office
- ☐ Agency Human Resources Department (bulletin board or other announcement)
- ☐ Federal, State, or Local Job Information Center
- ☐ Other

2. Sex (Check One):

- ☐ **Male**
- ☐ **Female**

3. Ethnicity (Check One):

- ☐ **Hispanic or Latino** - a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.
- ☐ **Not Hispanic or Latino**

4. Race (Check all that apply):

- ☐ **American Indian or Alaska Native** - a person having origins in any of the original peoples of North or South America (including Central America), and who maintains tribal affiliation or community attachment.
- ☐ **Asian** - a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, or Vietnam.
- ☐ **Black or African American** - a person having origins in any of the black racial groups of Africa.
- ☐ **Native Hawaiian or Other Pacific Islander** - a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific islands.
- ☐ **White** - a person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

5. Disability/Medical Conditions

The next questions address disability and serious health conditions. Your responses will ensure that we are reaching individuals with different types of physical and mental conditions. Consider your answers without the use of medication and aids (except eyeglasses) or the help of another person.

A. **Do you have any of the following? Check all boxes that apply to you:**

- ☐ Deaf or serious difficulty hearing
- ☐ Blind or serious difficulty seeing even when wearing glasses
- ☐ Missing an arm, leg, hand or foot
- ☐ Paralysis: Partial or complete paralysis (any cause)
- ☐ Severe Disfigurement: For example, severe disfigurements caused by burns, wounds, accidents, or congenital disorders
- ☐ Severe mobility impairment: For example, uses a wheelchair, scooter, walker or uses a leg brace to walk
- ☐ Bipolar disorder, schizophrenia, PTSD, major depression or other severe psychological disorder
- ☐ Severe Intellectual Disability (formerly described as mental retardation)
- ☐ Severe Developmental Disability: For example, cerebral palsy or autism spectrum disorder
- ☐ Traumatic Brain Injury
- ☐ Dwarfism
- ☐ Epilepsy or Other Seizure Disorders

B. **Because of a physical, mental, or emotional condition, do you have: Check all boxes that apply to you:**

- ☐ serious difficulty concentrating, remembering, or making decisions?
- ☐ serious difficulty walking or climbing stairs?
- ☐ difficulty dressing or bathing?
- ☐ difficulty doing errands alone such as visiting a doctor's office or shopping?

C. **Other serious health condition:**

- ☐ I do not have any of the above disabilities, but I have been diagnosed with a serious health condition (for example, diabetes, cancer, kidney dysfunction, HIV, anxiety disorder, fibromyalgia, Crohn's disease and other types of serious health conditions), or with a learning disability, a speech impairment, or a hearing impairment.

Note that under the Rehabilitation Act (Act), information on your disability status can only be used in connection with non-discrimination and affirmative action obligations. The information will be kept confidential in accordance with the Act's provisions and the information will be used only in accordance with the Act.

PRIVACY ACT AND PAPERWORK REDUCTION ACT STATEMENT

Privacy Act Information: This information is provided pursuant to Public Law 93-579 ("Privacy Act of 1974"), for individuals completing Federal records and forms that solicit personal information. The authority is 5 U.S.C. 7201 and the Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. Part 1607. No individual data is ever provided to selecting officials. This form will only be seen by Human Resource personnel and Equal Employment Opportunity officials. **Purpose and Routine Uses:** Data summarizing all applicants for a position will be used to determine if we are effectively recruiting and selecting individuals from all segments of the population. Only summary data is reported, and only in a format which can not be broken out by individual applicants. **Effects of Nondisclosure:** Providing this information is voluntary. No individual personnel selections are made based on this information.

Paperwork Reduction Act Statement: The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et. seq,) requires us to inform you that this information is being collected for planning and assessing affirmative employment program initiatives. Response to this request is voluntary. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The estimated burden of completing this form is five (5) minutes per response, including the time for reviewing instructions. Direct comments regarding the burden estimate or any other aspect of this form to [INSERT: Agency name and address] and to the Office of Management Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

[FR Doc. 2013–03528 Filed 2–14–13; 8:45 am]
BILLING CODE 6570–01–C

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Notice

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Wednesday, February 20, 2013, 9:30 a.m. Eastern Time.

PLACE: Commission Meeting Room on the First Floor of the EEOC Office Building, 131 ''M'' Street, NE., Washington, DC 20507.

STATUS: Part of the meeting will be open to the public and part of the meeting will be closed.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Announcement of Notation Votes, and
2. Report on Implementation of the EEOC's Strategic Plan for Fiscal Years 2012–2016.

CLOSED SESSION:

Review of select pending charges, investigations, conciliations, litigation strategy, and federal sector matters including adjudications and appeals.

NOTE: In accordance with the Sunshine Act, the open session of the meeting will be open to public observation of the Commission's deliberations and voting. The remainder of the meeting will be closed. Any matter not discussed or concluded may be carried over to a later meeting. For the open session, seating is limited and it is suggested that visitors arrive 30 minutes before the meeting in order to be processed through security and escorted to the meeting room. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides information about Commission meetings on its Web site, eeoc.gov., and provides a recorded announcement a week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings. The EEOC provides sign language interpretation and Communication Access Realtime Translation (CART) services at Commission meetings for the hearing impaired. Requests for other reasonable accommodations may be made by using the voice and TTY numbers listed above.

CONTACT PERSON FOR MORE INFORMATION: Bernadette B. Wilson, Acting Executive Officer on (202) 663–4077.

Dated: February 13, 2013.

Bernadette B. Wilson,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 2013–03774 Filed 2–13–13; 4:15 pm]
BILLING CODE 6570–01–P

FEDERAL COMMUNICATIONS COMMISSION

[AU Docket No. 13–12; DA 13–60]

Auction of Lower and Upper Paging Bands Licenses Scheduled for July 16, 2013; Comment Sought on Competitive Bidding Procedures for Auction 95

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of certain Paging Bands licenses scheduled to commence on July 16, 2013. This document also seeks comment on competitive bidding procedures for Auction 95.

DATES: Comments are due on or before February 22, 2013, and reply comments are due on or before March 14, 2013.

ADDRESSES: All filings in response to this public notice must refer to AU Docket No. 13–12. The Wireless Telecommunications Bureau strongly encourages interested parties to file comments electronically, and request that an additional copy of all comments and reply comments be submitted electronically to the following address: *auction95@fcc.gov.* Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail

and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

▪ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

▪ People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

FOR FURTHER INFORMATION CONTACT: *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For auction legal questions: Howard Davenport at (202) 418–0660; for general auction questions: Debbie Smith or Linda Sanderson at (717) 338–2868. *Mobility Division:* For Paging service rule questions: Kathy Harris (legal) or Keith Harper (technical) at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction 95 Comment Public Notice* released on February 1, 2013. The complete text of the *Auction 95 Comment Public Notice,* including an attachment and related Commission documents, is available for public inspection and copying from 8:00 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8:00 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The *Auction 95 Comment Public Notice* and related Commission documents also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, fax 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 13–60. The *Auction 95 Comment Public Notice* and related documents also are available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/95/,* or by using the search function for AU Docket No. 13–12 on the Commission's Electronic Comment Filing System (ECFS) web page at *http://www.fcc.gov/cgb/ecfs/.*

I. Introduction

1. The Wireless Telecommunications Bureau (Bureau) announces an auction of 5,905 paging licenses to commence on July 16, 2013, and is designated as Auction 95.) The Bureau seeks comment on the procedures to be used for this auction. The licenses available in Auction 95 consist of 4,902 licenses in the lower paging bands (35–36 MHz, 43–44 MHz, 152–159 MHz, 454–460 MHz) and 1,003 licenses in the upper paging bands (929–931 MHz).

II. Licenses To Be Offered in Auction 95

2. Auction 95 will offer licenses that remained unsold from previous auctions, licenses on which a winning bidder in a previous auction defaulted, and licenses for spectrum previously associated with licenses that cancelled or terminated. In a few cases, the available license does not cover the entire geographic area due to an excluded area or previous partitioning.

3. Attachment A to the *Auction 95 Comment Public Notice* provides a summary of the licenses available in Auction 95. Due to the large number of licenses in Auction 95, the complete list of licenses available for this auction will be provided in electronic format only, available as separate Attachment A files at *http://wireless.fcc.gov/auctions/95/.*

A. License Descriptions

4. The Commission has concluded that the lower band licenses should be awarded in each of the 175 geographic areas known as Economic Areas (EAs), and the upper bands licenses should be awarded in each of the 51 geographic areas known as Major Economic Areas (MEAs). These EAs and MEAs encompass the United States, Guam, the Northern Mariana Islands, Puerto Rico, the U.S. Virgin Islands, and American Samoa.

5. Tables containing the block/frequency cross-reference list for the paging bands are included in Attachment B to the *Auction 95 Comment Public Notice.* These licenses are limited to bandwidths of 20 kilohertz (kHz) or 20 kHz pairs (40 kHz total). Licensees may use the spectrum to provide (1) one-way messaging, (2) two-way messaging, and (3) fixed wireless services. Provision of these services is subject to the technical limitations set forth for the service in Part 22 of the Commission's rules.

B. Incumbency Issues

6. There are pre-existing paging incumbent licenses. Incumbent (non-geographic) paging licensees operating under their existing authorizations are entitled to full protection from co-channel interference. Geographic area licensees are likewise afforded co-channel interference protection from incumbent licensees. Geographic area licensees are obligated to resolve possible interference concerns of adjacent geographic area licensees by negotiating a mutually acceptable agreement with the neighboring geographic licensee.

III. Due Diligence

7. Each potential bidder is solely responsible for investigating and evaluating all technical and marketplace factors that may have a bearing on the value of the licenses that it is seeking in this auction. Each bidder is responsible for assuring that, if it wins a license, it will be able to build and operate facilities in accordance with the Commission's rules. The FCC makes no representations or warranties about the use of this spectrum for particular services. Each applicant should be aware that an FCC auction represents an opportunity to become an FCC licensee in the paging service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC license constitute a guarantee of business success.

8. An applicant should perform its due diligence research and analysis before proceeding, as it would with any new business venture. Each potential bidder should perform technical analyses and/or refresh any previous analyses to assure itself that, should it become a winning bidder for any Auction 95 license, it will be able to build and operate facilities that will fully comply with all applicable technical and legal requirements. The Bureau strongly encourages each applicant to inspect any prospective transmitter sites located in, or near, the geographic area for which it plans to bid; confirm the availability of such sites; and familiarize itself with the Commission's rules regarding the National Environmental Policy Act.

9. The Bureau strongly encourages each applicant to conduct its own research prior to Auction 95 in order to determine the existence of pending administrative, rulemaking, or judicial proceedings that might affect its decisions regarding participation in the auction.

10. The Bureau strongly encourages participants in Auction 95 to continue such research throughout the auction. The due diligence considerations mentioned in the *Auction 95 Comment Public Notice* does not comprise an exhaustive list of steps that should be undertaken prior to participating in this auction. As always, the burden is on the potential bidder to determine how much research to undertake, depending upon

the specific facts and circumstances related to its interests.

IV. Bureau Seeks Comment on Auction Procedures

11. The Commission directed the Bureau, under delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. Therefore the Bureau seeks comment on the following issues relating to the conduct of Auction 95.

A. Auction Structure

i. Simultaneous Multiple-Round Auction Design

12. The Bureau proposes to auction all licenses included in Auction 95 using the Commission's standard simultaneous multiple-round auction format. This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. Typically, bidding remains open on all licenses until bidding stops on every license. The Bureau seeks comment on this proposal.

ii. Anonymous Bidding

13. In several prior auctions the Commission has adopted procedures to limit the disclosure of certain bidder-specific information until after the auction. Consistent with that practice, the Bureau proposes to conduct Auction 95 using certain procedures for limited information disclosure or anonymous bidding. Specifically, the Bureau proposes to withhold, until after the close of bidding, public release of (1) bidders' license selections on their short-form applications (FCC Form 175), (2) the amounts of bidders' upfront payments and bidding eligibility, and (3) information that may reveal the identities of bidders placing bids and taking other bidding-related actions.

14. Under these proposed limited information procedures, the amount of every bid placed and whether a bid was withdrawn would be disclosed after the close of every round, but the identities of bidders placing specific bids or withdrawals and the net bid amounts would not be disclosed until after the close of the auction.

15. Bidders would have access to additional information about their own bids. For example, bidders would be able to view their own level of eligibility, before and during the auction, through the Commission's Integrated Spectrum Auction System (ISAS or FCC Auction System).

16. Moreover, for the purpose of complying with 47 CFR 1.2105(c) prohibiting certain communications between applicants (formerly referred to as the anti-collusion rule), applicants would be made aware of other applicants with which they will not be permitted to cooperate, collaborate, or communicate, including discussing bids, bidding strategies, or post-auction market structure. Specifically, the Bureau would notify separately each applicant in Auction 95 whether applicants with short-form applications to participate in pending auctions, including but not limited to Auction 95, have applied for licenses in any of the same or overlapping geographic areas as that applicant.

17. After the close of bidding, bidders' license selections, upfront payment amounts, bidding eligibility, bids, and other bidding-related actions would be made publicly available.

18. The Bureau seeks comments on its proposal to implement anonymous bidding in Auction 95. The Bureau also seeks comment on alternatives to the use of anonymous bidding procedures for Auction 95. When the Commission first proposed limited information disclosure procedures, it did so in response to analysis suggesting that under certain circumstances the competitiveness and economic efficiency of a simultaneous multiple-round auction may be enhanced if such information is withheld until after the close of the auction. The Bureau encourages parties to provide information about the benefits and costs of complying with limited information procedures as compared with the benefits and costs of alternative procedures that would provide for the disclosure of more information on bidder identities and interests in the auction. If commenters believe that the Bureau should not adopt procedures to limit the disclosure of certain bidder-specific information until after the auction, they should explain their reasoning.

iii. Bidding Rounds

19. Auction 95 will consist of sequential bidding rounds. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction.

20. The Commission will conduct Auction 95 over the Internet using the Commission's Integrated Spectrum Auction System (FCC Auction System). Bidders will also have the option of placing bids by telephone through a dedicated Auction Bidder Line. The toll-free telephone number for the Auction Bidder Line will be provided to qualified bidders prior to the start of the auction.

21. The Bureau proposes to retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. Under this proposal, the Bureau may change the amount of time for bidding rounds, the amount of time between rounds, or the number of rounds per day, depending upon bidding activity and other factors. The Bureau seeks comment on this proposal. Commenters on this issue should address the role of the bidding schedule in managing the pace of the auction, specifically discussing the tradeoffs in managing auction pace by bidding schedule changes, by changing the activity requirements or bid amount parameters, or by using other means.

iv. Stopping Rule

22. The Bureau has discretion to establish stopping rules before or during multiple round auctions in order to complete the auction within a reasonable time. For Auction 95, the Bureau proposes to employ a simultaneous stopping rule approach, which means all licenses remain available for bidding until bidding stops on every license. More specifically, bidding will close on all licenses after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws any provisionally winning bids. Thus, unless the Bureau announces alternative procedures, the simultaneous stopping rule will be used in this auction, and bidding will remain open on all licenses until bidding stops on every license. Consequently, it is not possible to determine in advance how long the bidding in this auction will last.

23. Further, the Bureau proposes to retain the discretion to exercise any of the following options during Auction 95: (a) Use a modified version of the simultaneous stopping rule that would close the auction for all licenses after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid, or places any new bids on a license for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule; (b) Use a modified version of the simultaneous stopping rule that would close the auction for all licenses after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid, or places any new bids on a license that is not FCC

held. Thus, absent any other bidding activity, a bidder placing a new bid on a license that does not already have a provisionally winning bid (an FCC-held license) would not keep the auction open under this modified stopping rule; (c) Use a modified version of the simultaneous stopping rule that combines (a) and (b); (d) Declare the auction will end after a specified number of additional rounds (special stopping rule). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s), after which the auction will close; and (e) Keep the auction open even if no bidder places any new bids, applies a waiver, or withdraws any provisionally winning bids. In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver.

24. The Bureau proposes to exercise these options only in certain circumstances, for example, where the auction is proceeding unusually slowly or quickly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time or will close prematurely. Before exercising these options, the Bureau is likely to attempt to change the pace of the auction. For example, the Bureau may adjust the pace of bidding by changing the number of bidding rounds per day and/or the minimum acceptable bids. The Bureau proposes to retain the discretion to exercise any of these options with or without prior announcement during the auction. The Bureau seeks comment on these proposals.

v. Information Relating to Auction Delay, Suspension, or Cancellation

25. For Auction 95, the Bureau proposes that it may delay, suspend, or cancel the auction in the event of a natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. The Bureau will notify participants of any such delay, suspension or cancellation by public notice and/or through the FCC Auction System's announcement function. If the auction is delayed or suspended, the Bureau may, in its sole discretion, elect to resume the auction starting from the beginning of the current round or from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureau emphasize that it will exercise this authority solely at its discretion, and not as a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureau seeks comment on this proposal.

B. Auction Procedures

i. Upfront Payments and Bidding Eligibility

26. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned, taking into account such factors as the efficiency of the auction process and the potential value of similar licenses. The upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on licenses. Upfront payments that are related to the specific licenses being auctioned protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. For Auction 95, the proposed upfront payments are equal to the proposed minimum opening bids. The Bureau seeks comment on this proposal.

27. The Bureau further proposes that the amount of the upfront payment submitted by a bidder will determine its initial bidding eligibility in bidding units. The Bureau proposes to assign each license a specific number of bidding units, equal to one bidding unit per dollar of the upfront payment listed for the license. The specific bidding units for each license are set forth in the complete list of licenses available for Auction 95, available as separate Attachment A files at *http://wireless.fcc.gov/auctions/95/*. The number of bidding units for a given license is fixed and does not change during the auction as prices change. A bidder may place bids on multiple licenses, provided that the total number of bidding units associated with those licenses does not exceed its current eligibility. A bidder cannot increase its eligibility during the auction; it can only maintain its eligibility or decrease its eligibility. Thus, in calculating its upfront payment amount and hence its initial bidding eligibility, an applicant must determine the maximum number of bidding units on which it may wish to bid (or hold provisionally winning bids) in any single round, and submit an upfront payment amount covering that total number of bidding units. The Bureau requests comment on these proposals.

ii. Activity Rule

28. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. A bidder's activity in a round will be the sum of the bidding units associated with any licenses upon which it places bids during the current round and the bidding units associated with any licenses for which it holds provisionally winning bids placed in previous rounds. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

29. The Bureau proposes to divide the auction into at least two stages, each characterized by a different activity requirement. The auction will start in Stage One. The Bureau proposes to advance the auction to the next stage by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of auction activity, including but not limited to the percentage of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the increase in revenue. The Bureau seeks comment on these proposals.

30. The Bureau proposes the following activity requirements, while noting again that the Bureau retains the discretion to change stages unilaterally by announcement during the auction: Stage One: In each round of the first stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on licenses representing at least 80 percent of its current bidding eligibility. Failure to maintain the required activity level will result in the use of an activity rule waiver or a reduction in the bidder's bidding eligibility for the next round of bidding. During Stage One, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by five-fourths ($5/4$). Stage Two: In each round of the second stage, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in the use of an activity rule waiver or a reduction in the bidder's bidding eligibility for the next round of

bidding. During Stage Two, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by twenty-nineteenths ($^{20}/_{19}$).

31. The Bureau requests comment on these activity requirements. Under this proposal, the Bureau will retain the discretion to change the activity requirements during the auction. For example, the Bureau could decide to add an additional stage with a higher activity requirement, not to transition to Stage Two if it believes the auction is progressing satisfactorily under the Stage One activity requirement, or to transition to Stage Two with an activity requirement that is higher or lower than the 95 percent proposed herein. If the Bureau exercises this discretion, it will alert bidders by announcement in the FCC Auction System.

iii. Activity Rule Waivers and Reducing Eligibility

32. When a bidder's eligibility in the current round is below the required minimum level, it may preserve its current level of eligibility through an activity rule waiver. An activity rule waiver applies to an entire round of bidding, not to a particular license. Activity rule waivers, which can be either proactive or automatic, are principally a mechanism for a bidder to avoid the loss of bidding eligibility in the event that exigent circumstances prevent it from bidding in a particular round.

33. The FCC Auction System assumes that a bidder that does not meet the activity requirement would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless (1) the bidder has no activity rule waivers remaining; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the activity requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, the bidder's current eligibility will be permanently reduced, possibly curtailing or eliminating the ability to place additional bids in the auction.

34. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring it into compliance with the activity rule. Reducing eligibility is an irreversible action; once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

35. Under the proposed simultaneous stopping rule, a bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the apply waiver function in the FCC Auction System) during a bidding round in which no bids are placed or withdrawn, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC Auction System in a round in which there are no new bids, withdrawals, or proactive waivers will not keep the auction open. A bidder cannot apply a proactive waiver after bidding in a round, and applying a proactive waiver will preclude it from placing any bids in that round. Applying a waiver is irreversible; once a proactive waiver is submitted, it cannot be unsubmitted, even if the round has not yet closed.

36. Consistent with recent FCC auctions, the Bureau proposes that each bidder in Auction 95 be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction. The Bureau seeks comment on this proposal.

iv. Reserve Price or Minimum Opening Bids

37. The Commission has directed the Bureau to seek comment on the use of a minimum opening bid amount and/or reserve price prior to the start of each auction.

38. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. It is possible for the minimum opening bid and the reserve price to be the same amount.

39. The Bureau proposes to establish minimum opening bid amounts for Auction 95. The Bureau believes that a minimum opening bid amount, which has been used in other auctions, is an effective bidding tool for accelerating the competitive bidding process. The Bureau does not propose to establish separate reserve prices for the licenses to be offered in Auction 95.

40. As the Bureau did for the last auction of paging licenses, Auction 87, the Bureau proposes to set the minimum opening bid for each license available in Auction 95 at $500. The Bureau seeks comment on this proposal.

41. If commenters believe that these minimum opening bid amounts will result in unsold licenses, are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so and comment on the desirability of an alternative approach. If requesting a lower minimum opening bid amount for a specific license offered in this auction, a commenter should justify the requested amount in detail. The Bureaus asks commenters to support their claims with valuation analyses and suggested amounts or formulas for reserve prices or minimum opening bids. In establishing minimum opening bid amounts, the Bureau particularly seeks comment on factors that could reasonably have an impact on valuation of the spectrum being auctioned, including levels of incumbency within these spectrum bands, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands, and any other relevant factors. The Bureau has not attempted to adjust minimum opening bid amounts for licenses based on precise levels of incumbency within particular geographic areas, and has instead proposed low minimum opening bid amounts that are intended to reflect overall incumbency levels. The Bureau seeks comment on this approach, on whether the public interest would be served by having no minimum opening bid amount or reserve price.

v. Bid Amounts

42. The Bureau proposes that, in each round, an eligible bidder will be able to place a bid on a given license using one or more pre-defined bid amounts. Under this proposal, the FCC Auction System interface will list the acceptable bid amounts for each license. The Bureau proposes to calculate bid amounts.

a. Minimum Acceptable Bids

43. The first of the acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid for the license. After there is a provisionally winning bid for a license, the minimum acceptable bid amount will be a certain percentage higher. That is, the FCC will calculate the minimum acceptable bid amount by multiplying the provisionally winning bid amount times one plus the

minimum acceptable bid percentage. If, for example, the minimum acceptable bid percentage is 10 percent, the minimum acceptable bid amount will equal (provisionally winning bid amount) * (1.10), rounded. In the case of a license for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the license. The Bureau proposes to use a minimum acceptable bid percentage of 10 percent. This means that the minimum acceptable bid amount for a license will be approximately 10 percent greater than the provisionally winning bid amount for the license.

b. Additional Bid Amounts

44. The FCC will calculate any additional bid amounts using the minimum acceptable bid amount and a bid increment percentage, which need not be the same as the percentage used to calculate the minimum acceptable bid amount. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. If, for example, the bid increment percentage is 5 percent, the calculation is (minimum acceptable bid amount) * (1 + 0.05), rounded, or (minimum acceptable bid amount) * 1.05, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.10, rounded; etc. The Bureau will round the results using the Commission's standard rounding procedures for auctions. The Bureau proposes to use a bid increment percentage of 5 percent.

45. For Auction 95 the Bureau proposes to start with eight additional bid amounts (for a total of nine bid amounts). The Bureau seeks comment on this proposal. If commenters believe the Bureau should start with fewer or no additional bid amounts, they should address the issue of additional bid amounts in light of particular circumstances of Auction 95, including the nature of the license inventory.

c. Bid Amount Changes

46. The Bureau retains the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid amounts if the Bureau determines that circumstances so dictate. Further, the Bureau retains the discretion to do so on a license-by-license basis. The Bureau also retains the discretion to limit (a) the amount by which a minimum acceptable bid for a license may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. For example, the Bureau could set a $10,000 limit on increases in minimum acceptable bid amounts over provisionally winning bids. Thus, if calculating a minimum acceptable bid using the minimum acceptable bid percentage results in a minimum acceptable bid amount that is $12,000 higher than the provisionally winning bid on a license, the minimum acceptable bid amount would instead be capped at $10,000 above the provisionally winning bid. The Bureau seeks comment on the circumstances under which the Bureau should employ such a limit, factors it should consider when determining the dollar amount of the limit, and the tradeoffs in setting such a limit or changing other parameters, such as changing the minimum acceptable bid percentage, the bid increment percentage, or the number of acceptable bid amounts. If the Bureau exercises this discretion, it will alert bidders by announcement in the FCC Auction System during the auction.

47. The Bureau seeks comment on these proposals. Commenters may wish to address the role of the minimum acceptable bids and the number of acceptable bid amounts in managing the pace of the auction and the tradeoffs in managing auction pace by changing the bidding schedule, activity requirements, or bid amounts, or by using other means.

vi. Provisionally Winning Bids

48. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. At the end of a bidding round, the FCC Auction System determines a provisionally winning bid for each license based on the highest bid amount received. If identical high bid amounts are submitted on a license in any given round (i.e., tied bids), the FCC Auction System will use a random number generator to select a single provisionally winning bid from among the tied bids. (The Auction System assigns a random number to each bid when the bid is entered. The tied bid with the highest random number wins the tiebreaker.) The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If the license receives any bids in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the license.

49. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the license at the close of a subsequent round, unless the provisionally winning bid is withdrawn. The Bureau reminds bidders that provisionally winning bids count toward activity for purposes of the activity rule.

vii. Bid Removal

50. For Auction 95, the Bureau proposes the following bid removal procedures. Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By removing a selected bid in the FCC Auction System, a bidder may effectively undo any bid placed within that round. In contrast to the bid withdrawal provisions, a bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid. The Bureau seeks comment on this bid removal proposal.

viii. Bid Withdrawal

51. The Bureau seeks comment on the following bid withdrawal procedures for Auction 95. When permitted in an auction, bid withdrawals provide a bidder with the option of withdrawing bids placed in prior rounds that have become provisionally winning bids. A bidder may withdraw its provisionally winning bids using the withdraw bids function in the FCC Auction System. A bidder that withdraws its provisionally winning bid(s), if permitted, is subject to the bid withdrawal payment provisions of the Commission rules.

52. The Bureau has discretion in managing the auction to limit the number of withdrawals to prevent any bidding abuses. The Commission has stated that the Bureau should exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures.

53. For Auction 95, the Bureau proposes to limit each bidder to withdrawing provisionally winning bids in only one round during the course of the auction. To permit a bidder to withdraw bids in more than one round may encourage insincere bidding or the

use of withdrawals for anti-competitive purposes. The round in which withdrawals may be used will be at the bidder's discretion, and there is no limit on the number of provisionally winning bids that may be withdrawn during that round. Withdrawals must be in accordance with the Commission's rules, including the bid withdrawal payment provisions specified in 47 CFR 1.2104(g). The Bureau seeks comment on these bid withdrawal procedures. If commenters believe that each bidder should be allowed to withdraw provisionally winning bids in more than one round during the course of the auction, they should state how many bid withdrawal rounds they seek and explain what specific factors lead them to that conclusion. If commenters believe that bidders in this auction should not be permitted to withdraw any bids, they should discuss their reasoning for this suggestion.

C. Post-Auction Payments

i. Interim Withdrawal Payment Percentage

54. The Bureau seeks comment on the appropriate percentage of a withdrawn bid that should be assessed as an interim withdrawal payment in the event that a final withdrawal payment cannot be determined at the close of the auction. In general, the Commission's rules provide that a bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or subsequent auction(s). If a bid is withdrawn and no subsequent higher bid is placed and/or the license is not won in the same auction, the final withdrawal payment cannot be calculated until after the close of a subsequent auction in which a higher bid for the license (or the equivalent to the license) is placed or the license is won. When that final payment cannot yet be calculated, the bidder responsible for the withdrawn bid is assessed an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed. 47 CFR 1.2104(g)(1) requires that the percentage of the withdrawn bid to be assessed as an interim bid withdrawal payment be between three percent and twenty percent and that it be set in advance of the auction.

55. The Commission has determined that the level of the interim withdrawal payment in a particular auction will be based on the nature of the service and the inventory of the licenses being offered. The Commission has noted that it may impose a higher interim withdrawal payment percentage to deter the anti-competitive use of withdrawals when, for example, bidders likely will not need to aggregate the licenses being offered in the auction, such as when few licenses are offered that are on adjacent frequencies or in adjacent areas, or when there are few synergies to be captured by combining licenses. With respect to the licenses being offered in Auction 95, the service rules permit a variety of fixed, mobile, and paging services, though the opportunities for combining licenses on adjacent frequencies or in adjacent areas are more limited than has been the case in previous auctions of paging licenses. Balancing the potential need for bidders to use withdrawals to avoid winning incomplete combinations of licenses with the Bureau's interest in deterring undesirable strategic use of withdrawals, the Bureau proposes a percentage below the maximum twenty percent permitted under the current rules but above the three percent previously provided by the Commission's rules. Specifically, the Bureau proposes to establish an interim bid withdrawal payment of ten percent of the withdrawn bid for this auction. The Bureau seeks comment on this proposal.

ii. Additional Default Payment Percentage

56. Any winning bidder that defaults or is disqualified after the close of an auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full and timely final payment, or is otherwise disqualified) is liable for a default payment under 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the Auction 95 bidder's winning bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

57. The Commission's rules provide that, in advance of each auction, it will establish a percentage between three percent and twenty percent of the applicable bid to be assessed as an additional default payment. As the Commission has indicated, the level of this additional payment in each auction will be based on the nature of the service and the licenses being offered.

58. For Auction 95, the Bureau proposes to establish an additional default payment of ten percent. Defaults weaken the integrity of the auction process and may impede the deployment of service to the public, and an additional ten percent default payment will be more effective in deterring defaults than the three percent used in some earlier auctions. At the same time, the Bureau does not believe the detrimental effects of any defaults in Auction 95 are likely to be unusually great. The Bureau seeks comment on this proposal.

V. Ex Parte Rules

59. This proceeding has been designated as a permit-but-disclose proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other provisions pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in 47 CFR 1.1206(b).

Federal Communications Commission.

Gary D. Michaels,

Deputy Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. 2013–03493 Filed 2–14–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receiverships of 10016 Main Street Bank, Northville, MI

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Main Street Bank, Northville, Michigan (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of Main Street Bank on October 10, 2008. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 32.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated at Washington, DC, this 12th day of February, 2013.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2013–03597 Filed 2–14–13; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 5, 2013.

A. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Marian V. Mehan, St. Louis, Missouri, as successor trustee of the Jolie Chase Knight Trust dated 12/20/01, and the Savannah Merrill Knight Trust dated 12/13/05, both in Thompsonville, Illinois; the Mark W. Knight Exempt Trust dated 12/11/95, St. Louis, Missouri; The EDK 2011 Family Trust Dated 5/26/2011, and The EDK Trust dated 2/18/05,both in Eldorado, Illinois; The 2010 John K. Pruellage Family Trust dated 12/22/10, St. Louis, Missouri; and the JCK 2012 Gift Trust dated 12/17/12, Thompsonville, Illinois;* to retain voting shares of Banterra Corp., Eldorado, Illinois, and thereby indirectly retain voting shares of Banterra Bank, Marion, Illinois.

Board of Governors of the Federal Reserve System, February 12, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–03564 Filed 2–14–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 15, 2013.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Third Coast Bancshares, Inc.,* Humble, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Third Coast Bank, SSB, Humble, Texas.

Board of Governors of the Federal Reserve System, February 12, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–03566 Filed 2–14–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 5, 2013.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. Pacific Mercantile Bancorp, Costa Mesa, California; Carpenter Fund Manager GP, LLC; Carpenter Fund Management, LLC; Carpenter Community Bancfund, L.P.; Carpenter Community Bancfund-CA, L.P.; Carpenter Bank Partners, Inc.; and CCFW, Inc., all in Irvine, California, through their subsidiary, Pacific Mercantile Bancorp, PM Asset Management, Inc., Costa Mesa California, to engage in extending credit and servicing loans, pursuant to section 225.28 (b)(1).

Board of Governors of the Federal Reserve System, February 12, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–03565 Filed 2–14–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATIONS GRANTED
JANUARY 1, 2013 THRU JANUARY 31, 2013

		01/02/2013
20130454	G	Gores Capital Partners III, L.P.; Harris Corporation; Gores Capital Partners III, L.P.
20130455	G	Charlesbank Equity Find VII, Limited Partnership; Francois Pinault; Charlesbank Equity Find VII, Limited Partnership.
20130459	G	C. Park Shaper; Kinder Morgan, Inc.; C. Park Shaper.
20130462	G	Donata Holding SE; Caribou Coffee Company, Inc.; Donata Holding SE.
20130472	G	Gestion Audem Inc.; PEER 1 Network Enterprises, Inc.; Gestion Audem Inc.
		01/03/2013
20130468	G	EQT Infrastructure II Limited Partnership; Westway Group Inc.; EQT Infrastructure II Limited Partnership.
20130474	G	Sheridan Production Partners II–B, L.P.; SandRidge Energy, Inc.; Sheridan Production Partners II–B, L.P.
		01/04/2013
20130479	G	The Medicines Company; Bristol-Myers Squibb Company; The Medicines Company.
20130481	G	Temasek Holdings (Private) Limited; FTS International, Inc.; Temasek Holdings (Private) Limited.
		01/05/2013
20121423	S	Wang Jian; Complete Genomics, Inc.; Wang Jian.
		01/07/2013
20130413	G	priceline.com Incorporated; Kayak Software Corporation; priceline.com Incorporated.
20130414	G	Elliott Associates. L.P.; Compuware Corporation; Elliott Associates, L.P.
20130460	G	Liberty Spinco, Inc.; Barnes & Noble, Inc.; Liberty Spinco, Inc.
20130463	G	Liberty Spinco, Inc.; Live Nation Entertainment, Inc.; Liberty Spinco, Inc.
20130464	G	Gregory B. Maffei; Liberty Spinco, Inc.; Gregory B. Maffei.
20130465	G	Robert R. Bennett; Liberty Spinco, Inc.; Robert R. Bennett.
20130466	G	John C. Malone; Liberty Spinco, Inc.; John C. Malone.
		01/08/2013
20130477	G	The Toronto-Dominion Bank; Epoch Holding Corporation; The Toronto-Dominion Bank.
20130484	G	Hewlett-Packard Company; Digital Risk, LLC; Hewlett-Packard Company.
20130486	G	Trident IV, L.P.; GWC Co-Investment Partners, L.P.; Trident IV, L.P.
20130488	G	Sentara Healthcare; Halifax Regional Health System, Inc.; Sentara Healthcare.
		01/09/2013
20121265	G	DigitalGlobe, Inc.; GeoEye, Inc.; DigitalGlobe, Inc.
20121339	G	Cerberus Institutional Partners, L.P.; DigitalGlobe, Inc.; Cerberus Institutional Partners, L.P.
		01/11/2013
20130492	Y	Spectra Energy Corp.; Express US Holdings LP; Spectra Energy Corp.
		01/14/2013
20130470	G	Trident Private Holdings I, LLC; TNS, Inc.; Trident Private Holdings I, LLC.
20130473	G	Oracle Corporation; Eloqua, Inc.; Oracle Corporation.
20130483	G	Clayton, Dubilier & Rice Fund VIII, L.P.; Invacare Corporation; Clayton, Dubilier & Rice Fund VIII, L.P.
		01/17/2013
20130461	G	W.R. Berkley Corporation; Dermond API LLC; W.R. Berkley Corporation.

EARLY TERMINATIONS GRANTED—Continued
JANUARY 1, 2013 THRU JANUARY 31, 2013

01/18/2013		
20130505	G	Seven & i Holdings Co., Ltd.; Patrick B. O'Dell; Seven & i Holdings Co., Ltd.
01/22/2013		
20130490	G	Heraeus Holding GmbH; Spectris plc; Heraeus Holding GmbH.
20130501	G	Hormel Foods Corporation; Unilever N.V.; Hormel Foods Corporation.
20130509	G	Markel Corporation; Alterra Capital Holdings Limited; Markel Corporation.
20130518	G	The Laclede Group, Inc.; Energy Transfer Equity, L.P.; The Laclede Group, Inc.
01/24/2013		
20130506	G	The Varde Fund X (Master), L.P.; FirstCity Financial Corporation; The Varde Fund X (Master), L.P.
01/25/2013		
20130519	G	Dakota Holding Corporation; Duff & Phelps Corporation; Dakota Holding Corporation.
20130526	G	Summit Midstream Partners, LLC; GSO Capital Opportunities Fund LP; Summit Midstream Partners, LLC.
01/28/2013		
20130497	G	Mohawk Industries, Inc.; Emanuela Verlicchi, c/o Finceramica S.p.; Mohawk Industries, Inc.
20130498	G	Mohawk Industries, Inc.; Rosaria Marazzi; Mohawk Industries, Inc.
01/29/2013		
20130513	G	Carl C. Icahn; Transocean Ltd.; Carl C. Icahn.
01/30/2013		
20130525	G	Alamos Gold Inc.; Aurizon Mines Ltd.; Alamos Gold Inc.
20130539	G	Mitsubishi Chemical Holdings Corporation; Carlyle Japan Partners, L.P.; Mitsubishi Chemical Holdings Corporation.

FOR FURTHER INFORMATION CONTACT: Renee Chapman, Contact Representative, or Theresa Kingsberry, Legal Assistant, Federal Trade Commission, Premerger Notification Office, Bureau Of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2013–03458 Filed 2–14–13; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0246; Docket 2012–0001 Sequence 15]

General Services Administration Regulation; Submission for OMB Review; Packing List Clause

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for an extension of a information collection requirement for an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding the packing list clause. A notice was published in the **Federal Register** at 77 FR 66466, on November 5, 2012. One respondent submitted comments.

DATES: Submit comments on or before: March 18, 2013.

ADDRESSES: Submit comments identified by Information Collection 3090–0246, Packing List Clause, by any of the following methods:

• *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0246, Packing List Clause''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0246, Packing List Clause'' on your attached document.

• *Fax:* 202–501–4067.

• *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 3090–0246, Packing List Clause.

Instructions: Please submit comments only and cite Information Collection 3090–0246, Packing List Clause, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Deborah Eble, Procurement Analyst, GSA Policy Integrity Workforce, by telephone (215) 446–5823 or via email at *Deborah.eble@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

GSAR clause 552.211–77, Packing List, requires a contractor to include a packing list or other suitable document that verifies placement of an order and identifies the items shipped. In addition to information contractors would normally include on packing lists, the identification of cardholder name, telephone number and the term ''Credit Card'' is required.

B. Discussion and Analysis

One respondent submitted comments on the extension of the previously approved information collection, specifically questioning the government's calculation of the public burden.

Comment: The respondent commented that the extension of the information collection would violate the fundamental purposes of the Paperwork Reduction Act because of the burden it puts on the entity submitting the information and the agency collecting the information. The respondent opposes granting the extension of the information collection requirement.

Response: In accordance with the Paperwork Act (PRA), agencies can request OMB approval of an existing information collection. The PRA requires that agencies use the **Federal Register** notice and comment process to extend the OMB's approval every three years. This extension to a previously approved information collection pertains to the provision at GSAR 552.211–77, Packing List, which requires contractors to include a packing list that verifies the placement of the order and identifies the items shipped, a normal commercial practice. In addition to the information contractors would normally include on packing lists, the government requires identification of the name of the government credit cardholder, telephone number and the term ''Credit Card'' on the packing list in supply contracts.

The purpose of the information collection is to facilitate administration of government credit card purchases. Often the government credit cardholder is different from the consignee receiving shipment of the supplies. Providing the additional information ensures the recipient of the packing list, the consignee, notifies the government credit cardholder that the shipment has been received. Once the notification of successful shipment has been received, the cardholder can then authorize payment. This feedback is essential for the cardholder to reconcile his/her monthly statements. This is especially important if the micropurchase threshold is raised to support a contingency operation declaration under FAR subpart 18.2. Not granting this extension would increase costs to the Government during the reconciliation process and may delay payments to contractors for shipments of supplies received.

Comment: The respondent challenged the estimates used by the agency to calculate the public burden, stating that the burden was insufficient and inadequate to reflect the actual total burden. Specifically, the respondent noted that it was unclear as to how the estimated 4,000 information collection respondents were derived and the estimated number of packing lists in a given year. Therefore, the respondent stated the agency should utilize actual data from the last fiscal year or an estimate of the last three to five fiscal years, reassess the estimated burden, and revise it upwards to be more accurate as was done in FAR Case 2007–006. The respondent also found the ''less than one minute per response estimate'' to be unrealistically low stating the burden requires creating the packing list.

Response: Serious consideration is given during the open comment period to all comments received and adjustments are made to the paperwork burden estimate when necessary. The burden is prepared taking into consideration the necessary criteria in OMB guidance for estimating the paperwork burden put on the entity submitting the information. Consideration is given to an entity in reviewing the instruction; using technology to collect, process and disclose information; adjusting existing practices to comply with requirements; searching data sources; completing and reviewing the response and transmitting or disclosing information. Estimated burden hours only include those actions that exceed those a company would take in the normal course of business.

Careful consideration went into assessing the burden for this collection. Packing lists accompanying shipments of supplies are customary in the normal course of business, including the information listed in paragraph (a) of clause 552.211–77. The public burden is limited to the annotation on the packing list the name and telephone number of the government credit cardholder and the phrase ''Credit Card.''

While there is no centralized database for the collection of the packing lists in a fiscal year, the agency found the respondent's suggestion to use actual data reasonable to calculate the public burden. The annual reporting burden was revised, using actual data from the government-wide Federal Procurement Data System (FPDS) for Fiscal Year (FY) 2012. Two types of actions were analyzed: GSA actions for supplies where the method of payment was made by government credit card; and, non-GSA actions for supplies where both payment was by a government credit card and a GSA indefinite delivery contract for supplies was referenced. Average costs were derived in order for the government to estimate the number of packing slips per order. Thus, an adjustment is made to the annual reporting burden after review of the methodology for computing the number of respondents and packing lists in a given year and the estimated hours per response.

The government agreed with the respondent that the time per response did not allow for review and transmission of the government credit cardholder's name and telephone number and the phrase ''Credit Card'' into its packing list system and adjusted the burden accordingly.

Members of the public may submit comments for further consideration and are encouraged to provide data to support their request for an adjustment.

C. Annual Reporting Burdens

Respondents: 9,919.
Responses per Respondent: 13.
Hours per Response: .05.
Total Burden Hours: 6447.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 3090–0246, Packing List Clause, in all correspondence.

Dated: February 8, 2013.

Joseph A Neurauter,

Director, Office of Acquisition Policy, Senior Procurement Executive.

[FR Doc. 2013–03558 Filed 2–14–13; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–9076–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—October Through December 2012

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This quarterly notice lists CMS manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published from October through December 2012, relating to the Medicare and Medicaid programs and other programs administered by CMS.

FOR FURTHER INFORMATION CONTACT: It is possible that an interested party may need specific information and not be able to determine from the listed information whether the issuance or regulation would fulfill that need.

Consequently, we are providing contact persons to answer general questions concerning each of the addenda published in this notice.

Addenda	Contact	Phone No.
I CMS Manual Instructions	Ismael Torres	(410) 786–1864
II Regulation Documents Published in the **Federal Register**	Terri Plumb	(410) 786–4481
III CMS Rulings	Tiffany Lafferty	(410) 786–7548
IV Medicare National Coverage Determinations	Wanda Belle	(410) 786–7491
V FDA-Approved Category B IDEs	John Manlove	(410) 786–6877
VI Collections of Information	Mitch Bryman	(410) 786–5258
VII Medicare-Approved Carotid Stent Facilities	Sarah J. McClain	(410) 786–2294
VIII American College of Cardiology-National Cardiovascular Data Registry Sites	JoAnna Baldwin, MS	(410) 786–7205
IX Medicare's Active Coverage-Related Guidance Documents	Lori Ashby	(410) 786–6322
X One-time Notices Regarding National Coverage Provisions	Lori Ashby	(410) 786–6322
XI National Oncologic Positron Emission Tomography Registry Sites	Stuart Caplan, RN, MAS	(410) 786–8564
XII Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities	JoAnna Baldwin, MS	(410) 786–7205
XIII Medicare-Approved Lung Volume Reduction Surgery Facilities	JoAnna Baldwin, MS	(410) 786–7205
XIV Medicare-Approved Bariatric Surgery Facilities	Kate Tillman, RN, MAS	(410) 786–9252
XV Fluorodeoxyglucose Positron Emission Tomography for Dementia Trials	Stuart Caplan, RN, MAS	(410) 786–8564
All Other Information	Annette Brewer	(410) 786–6580

I. Background

Among other things, the Centers for Medicare & Medicaid Services (CMS) is responsible for administering the Medicare and Medicaid programs and coordination and oversight of private health insurance. Administration and oversight of these programs involves the following: (1) Furnishing information to Medicare and Medicaid beneficiaries, health care providers, and the public; and (2) maintaining effective communications with CMS regional offices, state governments, state Medicaid agencies, state survey agencies, various providers of health care, all Medicare contractors that process claims and pay bills, National Association of Insurance Commissioners (NAIC), health insurers, and other stakeholders. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act) and Public Health Service Act. We also issue various manuals, memoranda, and statements necessary to administer and oversee the programs efficiently.

Section 1871(c) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**.

II. Revised Format for the Quarterly Issuance Notices

While we are publishing the quarterly notice required by section 1871(c) of the Act, we will no longer republish duplicative information that is available to the public elsewhere. We believe this approach is in alignment with CMS' commitment to the general principles of the President's Executive Order 13563 released January 2011 entitled ''Improving Regulation and Regulatory Review,'' which promotes modifying and streamlining an agency's regulatory program to be more effective in achieving regulatory objectives. Section 6 of Executive Order 13563 requires agencies to identify regulations that may be ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand or repeal them in accordance with what has been learned.'' This approach is also in alignment with the President's Open Government and Transparency Initiative that establishes a system of transparency, public participation, and collaboration.

Therefore, this quarterly notice provides only the specific updates that have occurred in the 3-month period along with a hyperlink to the full listing that is available on the CMS Web site or the appropriate data registries that are used as our resources. This information is the most current up-to-date information and will be available earlier than we publish our quarterly notice. We believe the Web site list provides more timely access for beneficiaries, providers, and suppliers. We also believe the Web site offers a more convenient tool for the public to find the full list of qualified providers for these specific services and offers more flexibility and ''real time'' accessibility. In addition, many of the Web sites have listservs; that is, the public can subscribe and receive immediate notification of any updates to the Web site. These listservs avoid the need to check the Web site, as notification of updates is automatic and sent to the subscriber as they occur. If assessing a Web site proves to be difficult, the contact person listed can provide information.

III. How To Use the Notice

This notice is organized into 15 addenda so that a reader may access the subjects published during the quarter covered by the notice to determine whether any are of particular interest. We expect this notice to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals should view the manuals at *http://www.cms.gov/manuals.*

Authority: (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: February 8, 2013.

Kathleen Cantwell,

Director, Office of Strategic Operations and Regulatory Affairs.

Publication Dates for the Previous Four Quarterly Notices

We publish this notice at the end of each quarter reflecting information released by CMS during the previous quarter. The publication dates of the previous four Quarterly Listing of Program Issuances notices are: February 21, 2012 (77 FR 9931), May 18, 2012 (77 FR 29648), August 17, 2012 (77 FR 49799) and November 9, 2012 (77 FR 67368). For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period along with a hyperlink to the website to access this information and a contact person for questions or additional information.

Addendum I: Medicare and Medicaid Manual Instructions (October through December 2012)

The CMS Manual System is used by CMS program components, partners, providers, contractors, Medicare Advantage organizations, and State Survey Agencies to administer CMS programs. It offers day-to-day operating instructions, policies, and procedures based on statutes and regulations, guidelines, models, and directives. In 2003, we transformed the CMS Program Manuals into a web user-friendly presentation and renamed it the CMS Online Manual System.

How to Obtain Manuals

The Internet-only Manuals (IOMs) are a replica of the Agency's official record copy. Paper-based manuals are CMS manuals that were officially released in hardcopy. The majority of these manuals were transferred into the Internet-only manual (IOM) or retired. Pub 15-1, Pub 15-2 and Pub 45 are exceptions to this rule and are still active paper-based manuals. The remaining paper-based manuals are for reference purposes only. If you notice policy contained in the paper-based manuals that was not transferred to the IOM, send a message via the CMS Feedback tool.

Those wishing to subscribe to old versions of CMS manuals should contact the National Technical Information Service, Department of Commerce, 5301 Shawnee Road, Alexandria, VA 22312 Telephone (703-605-6050). You can download copies of the listed material free of charge at: http://cms.gov/manuals.

How to Review Transmittals or Program Memoranda

Those wishing to review transmittals and program memoranda can access this information at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL. This information is available at http://www.gpo.gov/libraries/

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. CMS publication and transmittal numbers are shown in the listing entitled Medicare and Medicaid Manual Instructions. To help FDLs locate the materials, use the CMS publication and transmittal numbers. For example, to find the Medicare National Coverage Determination publication titled Transcutaneous Electrical Nerve Stimulation (TENS) for Chronic Low Back Pain (CLBP) use CMS-Pub. 100-03, Transmittal No. 149.

Addendum I lists a unique CMS transmittal number for each instruction in our manuals or program memoranda and its subject number. A transmittal may consist of a single or multiple instruction(s). Often, it is necessary to use information in a transmittal in conjunction with information currently in the manual. For the purposes of this quarterly notice, we list only the specific updates to the list of manual instructions that have occurred in the 3-month period. This information is available on our website at www.cms.gov/Manuals.

Transmittal Number	Manual/Subject/Publication Number
	Medicare General Information (CMS-Pub. 100-01)
80	Manual Updates to Clarify SNF Claims Processing Hospital Insurance (Part A) for Inpatient Hospital, Hospice, Home Health and Skilled Nursing Facility (SNF) Services - A Brief Description Starting a Benefit Period Ending a Benefit Period Definition of Inpatient for Ending a Benefit Period
81	Update to Medicare Deductible, Coinsurance and Premium Rates for 2013 Basis for Determining the Part A Coinsurance Amounts Part B Annual Deductible Part B Premium
	Medicare Benefit Policy (CMS-Pub. 100-02)
160	Effect of Beneficiary Agreements Not to Use Medicare Coverage and When Payment May be Made to a Beneficiary for Service of an Opt-Out Physician/Practitioner Requirements of a Private Contract Requirements of the Opt-Out Affidavit

	Failure to Maintain Opt-Out Actions to Take in Cases of Failure to Maintain Opt-Out Physician/Practitioner Who Has Never Enrolled in Medicare Excluded Physicians and Practitioners Relationship between Opt-Out and Medicare Participation Agreements Participating Physicians and Practitioners Maintaining Information on Opt-Out Physicians Informing Medicare Managed Care Plans of the Identity of the Opt-Out Physicians or Practitioners Informing the National Supplier Clearinghouse (NSC) of the Identity of the Opt-Out Physicians or Practitioners System Identification Emergency and Urgent Care Situations Denial of Payment to Employers of Opt-Out Physicians and Practitioners Denial of Payment to Beneficiaries and Others Payment for Medically Necessary Services Ordered or Prescribed by an Opt-out Physician or Practitioner Renewal of Opt-Out Early Termination of Opt-Out Application to the Medicare Advantage Program Claims Denial Notices to Opt-Out Physicians and Practitioners Claims Denial Notices to Beneficiaries
161	Manual Updates to Clarify SNF Claims Processing Three-Day Prior Hospitalization General Daily Skilled Services Defined Definition of Durable Medical Equipment
162	Issued to a specific audience, not posted to Internet/Intranet/ due to Sensitivity of Instruction
163	Implementing the Claims-Based Data Collection Requirement for Outpatient Therapy Services -- Section 3005(g) of the Middle Class Tax Relief and Jobs Creation Act (MCTRJCA) of 2012
164	Expansion of Medicare Telehealth Services for CY 2013 List of Medicare Telehealth Services
Medicare National Coverage Determination (CMS-Pub. 100-03)	
148	Bariatric Surgery for the Treatment of Morbid Obesity National Coverage Determination, Addition of Laparoscopic Sleeve Gastrostomy (LSG) Bariatric Surgery for Treatment of Morbid Obesity
149	Transcutaneous Electrical Nerve Stimulation (TENS) for Chronic Low Back Pain (CLBP)
Medicare Claims Processing (CMS-Pub. 100-04)	
2562	Influenza Vaccine Payment Allowances - Annual Update for 2012-2013 Season
2563	Revised and Clarified Place of Service (POS) Coding Instructions Site of Service Payment Differential Place of Service (POS) Instructions for the Professional Component (PC or Interpretation) and the Technical Component (TC) of Diagnostic Tests Items 14-33-Provider of Service or Supplier Information Place of Service Codes (POS) and Definitions Carrier Instructions for Place of Service (POS) Codes
2564	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
2565	Reasonable Charge Update for 2013 for Splints, Casts, and Certain Intraocular Lenses
2566	Medicare Physician Fee Schedule Database (MPFSDB) 2013 File Layout Manual Addendum
2567	Issued to a specific audience, not posted to Internet/Intranet/ due to Sensitivity of Instruction
2568	January 2013 Quarterly Average Sales Price (ASP) Medicare Part B Drug Pricing Files and Revisions to Prior Quarterly Pricing Files
2569	Modifications to the National Coordination of Benefits Agreement (COBA) Crossover Process Coordination of Benefits Agreement (COBA) Detailed Error Report Notification Process Coordination of Benefits Agreement (COBA) 5010 Coordination of Benefits (COB) Requirements
2570	Annual Type of Service (TOS) Update Type of Service (TOS)
2571	Updated Billing Requirements for Outpatient Therapy Services -- Middle Class Tax Relief and Jobs Creation Act (MCTRJCA) of 2012 Carrier Specific Requirements for Certain Specialties/Services Provider of Service or Supplier Information
2572	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2573	Manual Updates to Clarify SNF Claims Processing Types of Services Subject to the Consolidated Billing Requirement for SNFs Services Included in Part A PPS Payment Not Billable Separately by the SNF Physician's Services and Other Professional Services Excluded From Part A PPS Payment and the Consolidated Billing Requirement Other Excluded Services Beyond the Scope of a SNF Part A Benefit Emergency Services Services Excluded from Part A PPS Payment and the Consolidated Billing Requirement on the Basis of Beneficiary Characteristics and Election Dialysis and Dialysis-Related Services to a Beneficiary With ESRD Hospice Care for a Beneficiary's Terminal Illness Other Services Excluded from SNF PPS and Consolidated Billing Ambulance Services Screening and Preventive Services Therapy Services Determine Utilization on Day of Discharge, Death, or Day Beginning a Leave of Absence
2574	Payment of Global Surgical Split Care in a Method II Critical Access Hospital (CAH) Submitted with Modifier 54 and/or 55
2575	Payment of Global Surgical Split-Care in a Method II CAH Submitted with Modifier 54 and/or 55
2576	Affordable Care Act (ACA) Section 3025 expansion of a field in the Inpatient Provider Specific File (PSF) Addendum A - Provider Specific File
2577	Update to the Fiscal Intermediary Shared Systems (FISS) for the End Stage Renal Disease (ESRD) Quality Incentive Program (QIP) Adjustments for

	Children's Hospitals
2578	Enforcing Interim Billing for Partial Hospitalization Services Submitting Bills In Sequence for a Continuous Inpatient Stay or Course of Treatment
2579	Medicare System Update to Include Rendering Line Level National Provider Identifiers (NPIs) for Primary Care Incentive Program (PCIP) Payments to Critical Access Hospitals (CAHs)
2580	Issued to a specific audience, not posted to Internet/Intranet/ due to Confidentiality of Instruction
2581	Issued to a specific audience, not posted to Internet/Intranet/ due to Sensitivity of Instruction
2582	New Erythropoietin Stimulating Agent (ESA) Peginesatide Requirements for End Stage Renal Disease (ESRD) Coding for Adequacy of Dialysis, Vascular Access and Infection
2583	Erroneous Partial Episode Payment Adjustments on Certain Home Health Dual-Eligible Claims
2584	Issued to a specific audience, not posted to Internet/Intranet/ due to Confidentiality of Instruction
2585	Issued to a specific audience, not posted to Internet/Intranet/ due to Confidentiality of Instruction
2586	Issued to a specific audience, not posted to Internet/Intranet/ due to Confidentiality of Instruction
2587	Issued to a specific audience, not posted to Internet/Intranet/ due to Confidentiality of Instruction
2588	Implementation of Changes to the End-Stage Renal Disease (ESRD) Prospective Payment System (PPS) Consolidated Billing Requirements and a Clarification of Outlier Services for Calendar Year 2013
2589	Issued to a specific audience, not posted to Internet/Intranet/ due to Confidentiality of Instruction
2590	Bariatric Surgery for the Treatment of Morbid Obesity National Coverage Determination, Addition of Laparoscopic Sleeve Gastrectomy (LSG) Billing Requirements for Special Services General HCPCS Procedure Codes for Bariatric Surgery ICD-9 Procedure Codes for Bariatric Surgery (FIs only) ICD-9 Diagnosis Codes for BMI $\geq$35 Claims Guidance for Payment
2591	Instructions for Downloading the Medicare ZIP Code File for April 2013
2592	Home Health Prospective Payment System (HH PPS) Rate Update for Calendar Year (CY) 2013
2593	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2594	Testing HIPAA Transactions Following a System Change General Remittance Completion Requirements
2595	Announcement of Medicare Rural Health Clinic (RHC) and Federally Qualified Health Centers (FQHC) Payment Rate Increases
2596	2013 Annual Update to the Therapy Code List
2597	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
2598	Annual Type of Service (TOS) Update
	Type of Service (TOS)
2599	October 2012 Update of the Hospital Outpatient Prospective Payment System (OPPS) Transitional Outpatient Payments (TOPs) for CY 2010 through CY 2012 Fiscal Intermediary Billing Requirements
2600	Therapy Cap Values for Calendar Year (CY) 2013
2601	Calendar Year (CY) 2013 Annual Update for Clinical Laboratory Fee Schedule and Laboratory Services Subject to Reasonable Charge Payment
2602	New Place of Service (POS) Code for Place of Employment/Worksite Place of Service Codes (POS) and Definitions
2603	Implementing the Claims-Based Data Collection Requirement for Outpatient Therapy Services -- Section 3005(g) of the Middle Class Tax Relief and Jobs Creation Act (MCTRJCA) of 2012
2604	Issued to a specific audience, not posted to Internet/Intranet/ due to Confidentiality of Instruction
2605	Transcutaneous Electrical Nerve Stimulation (TENS) for Chronic Low Back Pain (CLBP)
2606	Expansion of Medicare Telehealth Services for CY 2013
2607	National Correct Coding Initiative (NCCI) Add-On Codes Replacement of Identical Letter, Dated December 19, 1996 with Subject Line, Correct Coding Initiative Add-On (ZZZ) Codes – ACTION
2608	CY 2013 Update for Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Fee Schedule Gap-filling DMEPOS Fees
2609	Quarterly Update to the Correct Coding Initiative (CCI) Edits, Version 19.1, Effective
2610	Update To Publication 100-04, Claims Processing Instructions For Chapter 12, Non-Physician Practitioners (NPPs) Assistant-at-Surgery Services Physician Assistant (PA) Services Payment Methodology Global Surgical Payments Limitations for Assistant-at-Surgery Services Furnished by Physician Assistants Outpatient Mental Health Treatment Limitation PA Billing to the Contractor Nurse Practitioner (NP) and Clinical Nurse Specialist (CNS) Services Payment Methodology Limitations for Assistant-at-Surgery Services Furnished by Nurse Practitioners and Clinical Nurse Specialists Outpatient Mental Health Treatment Limitation NP and CNS Billing to the Contractor Clinical Social Worker (CSW) Services Payment
2611	January 2013 Update of the Hospital Outpatient Prospective Payment System (OPPS) Composite APCs Payment Adjustment for Certain Cancer Hospitals for CY 2012 and CY 2013 Billing for "Sometimes Therapy" Services that May be Paid as Non-Therapy Services for Hospital Outpatients Special Partial Hospitalization Billing Requirements for Hospitals,

	Community Mental Health Centers, and Critical Access Hospitals Bill Review for Partial Hospitalization Services Provided in Community Mental Health Centers (CMHC)
2612	Bill Review for Partial Hospitalization Services Provided in Community Mental Health Centers (CMHC)
2613	Revised and Clarified Place of Service (POS) Coding Instructions Site of Service Payment Differential Place of Service (POS) Instructions for the Professional Component (PC or Interpretation) and the Technical Component (TC) of Diagnostic Tests Items 14-33 - Provider of Service or Supplier Information Place of Service Codes (POS) and Definitions
2614	Updated Billing Requirements for Outpatient Therapy Services -- Middle Class Tax Relief and Jobs Creation Act (MCTRJCA) of 2012 Carrier Specific Requirements for Certain Specialties/Services Provider of Service or Supplier Information
2615	Revisions of the Financial Limitation for Outpatient Therapy Services – Section 3005 of the Middle Class Tax Relief and Job Creation Act of 2012 Application of Financial Limitations Claims Processing Requirements for Financial Limitations Notification for Beneficiaries Exceeding Financial Limitations
Medicare Secondary Payer (CMS-Pub. 100-05)	
00	None
Medicare Financial Management (CMS-Pub. 100-06)	
213	Notice of New Interest Rate for Medicare Overpayments and Underpayments -1st qtr. Notification for FY 2013
214	Medicare Financial Management Manual, Chapter 7, Internal Control Requirements CMS Contractor Internal Control Review Process and Timeline Risk Assessment Certification Package for Internal Controls (CPIC) Requirements OMB Circular A-123, Appendix A: Internal Controls Over Financial Reporting (ICOFR) CPIC - Report of Internal Control Deficiencies Definitions of Control Deficiency, Significant Deficiency, and Material Weakness Material Weaknesses Identified During the Reporting Period Statement on Standards for Attestation Engagements (SSAE) Number 16, Reporting on Controls at Service Providers Corrective Action Plans Submission, Review, and Approval of Corrective Action Plans CMS Finding Numbers List of CMS Contractor Control Objectives
215	None
216	Modification/Addition of Group Codes/Specialty Codes Non-Physician Practitioner/Supplier Specialty Codes
Medicare State Operations Manual (CMS-Pub. 100-07)	
00	None
Medicare Program Integrity (CMS-Pub. 100-08)	
435	General Update to Chapter 15 of the Program Integrity Manual (PIM) – Part IX Correspondence Address and E-mail Addresses Section 4 of the Form CMS-855A Section 4 of the Form CMS-855B Section 4 of the Form CMS-855I Intervening Change of Ownership (CHOW) Reserved for Future Use Reserved for Future Use Denials Ordering/Certifying Suppliers Who Do Not Have Medicare Billing Privileges Processing Initial Form CMS-855O Submissions Form CMS-855O Revocations CMS or Contractor Issued Deactivations Revocations Special Instructions Regarding Revocation Reason 8 Reserved for Future Use
436	Issued to a specific audience, not posted to Internet/Intranet due to Confidentiality of Instruction
437	Revision to Section 15.5.20 of Chapter 15 of the Program Integrity Manual (PIM) Processing Form CMS-855R Applications
438	Progress Notes and Forms Progress Notes and Forms
439	Issued to a specific audience, not posted to Internet/Intranet/ due to Confidentiality of Instruction
440	Revision to Appeals Section of Chapter 15 of the Program Integrity Manual (PIM) Appeals Process Appeals Involving Non-Certified Suppliers Corrective Action Plans (CAPs) Reconsideration Requests Additional Appeal Levels Appeals Involving Certified Providers and Certified Suppliers Corrective Action Plans (CAPs) Reconsideration Requests Additional Appeal Levels
441	Retirement of the Program Integrity management Reporting (PIMR) System Medical Review Definitions Background Background Definitions Automated Medical Review Routine Medical Review Demand Bill Claims Review Medical Review Reopening Prepay Complex Provider Specific Review Prepay Complex Service Specific Review Prepay Complex Provider Specific Probe Review Prepay Complex Service Specific Probe Review Advanced Determination of Medicare Coverage (ADMC)

	Postpay Complex Provider Specific Probe Review Postpay Complex Service Specific Probe Review Postpay Complex Provider Specific Review Postpay Complex Service Specific Review Data Analysis Policy Development Medical Review Edit Development Externally Directed Reviews Provider Compliance Group Directed Reviews Coding Decisions Monthly Reporting of Medical Review Savings Reserved Reserved Reserved
442	Update for Amendments, Corrections and Delayed Entries in Medical Documentation Amendments, Corrections and Delayed Entries in Medical Documentation
443	National Coverage Determinations (NCDs) Coverage Provisions in Interpretive Manuals Local Coverage Determinations (LCDs) Durable Medical Equipment Medicare Administrative Contractors (DME MACs) Adoption or Rejection of LCDs Recommended by Durable Medical Equipment Program Safeguard Contractors (DME PSCs) Individual Claim Determinations When To Develop New/Revised LCDs Content of an LCD Reasonable and Necessary Provisions in LCDs Coding Provisions in LCDs Use of Absolute Words in LCDs LCD Requirements That Alternative Item or Service Be Tried First LCD Development Process Evidence Supporting LCDs The Comment Period CAC Structure and Process LCD Reconsideration Process R Challenge of an LCD etired LCDs and The LCD Record The Challenge Subpoenas Dismissals for Cause Effectuating the Decision Evaluation of Local Coverage Determination (LCD) Topics for National Coverage Determination (NCD) Consideration
444	Retirement of the Program Integrity Management Reporting (PIMR) System
Medicare Contractor Beneficiary and Provider Communications (CMS-Pub. 100-09)	
00	None
Medicare Quality Improvement Organization (CMS-Pub. 100-10)	
00	None
Medicare End Stage Renal Disease Network Organizations (CMS Pub 100-14)	
00	None
Medicare Managed Care (CMS-Pub. 100-16)	
00	None
Medicare Business Partners Systems Security (CMS-Pub. 100-17)	
00	None
Demonstrations (CMS-Pub. 100-19)	
85	Revisions to the Method of Cost Settlement for Inpatient Services for Rural Hospitals Participating Under Demonstration Authorized by Section 410A of the Medicare Modernization Act. Sections 3123 and 10313 of the Affordable Care Act authorizes an expansion of the demonstration and an extension for an additional 5-year period. This CR makes revisions to CR 7505, which gives instructions for the additional 5-year period
86	Implementation of the Hospital Value-Based Purchasing Program and Hospital Readmission Reduction Program for the Rural Community Hospital Demonstration
One Time Notification (CMS-Pub. 100-20)	
1128	Recompiling of Application Data Structure Descriptors
1129	Elimination of the Fiscal Intermediary Shared System (FISS) Off Quarter User Releases
1130	Implementation of the Redesigned MSN
1131	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
1132	Issued to a specific, audience not posted to Internet/Intranet due to Confidentiality of Instruction
1133	New Informational Unsolicited Response (IUR) Process to Identify Previously Paid Claims for Services Furnished to Medicare Beneficiaries Classified as "Unlawfully Present" in the United States
1134	New Informational Unsolicited Response (IUR) Process to Identify Previously Paid Claims for Services Furnished to Incarcerated Medicare
1135	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
1136	National Correct Coding Initiative (NCCI) Associated Modifier Changes (Additions)
1137	PWK System Modifications for Processing Days
1138	Adding Bankruptcy Status Field to the Recovery Audit Contractor Daily and Weekly Reports
1139	Durable Medical Equipment (DME) National Competitive Bidding (NCB): National Mail Order (NMO) Program Implementation for Diabetic Supplies
1140	Termination of the Common Working File ELGB Provider Query
1141	The Supplemental Security Income (SSI)/Medicare Beneficiary Data for Fiscal Year 2010 for Inpatient Prospective Payment System (IPPS) Hospitals, Inpatient Rehabilitation Facilities (IRFs), and Long Term Care Hospitals (LTCHs)
1142	Editing for Duplicate Payment of Nonphysician Outpatient Services Provided During an Inpatient Hospital Admission
1143	Issued to a specific, audience not posted to Internet/Intranet due to Confidentiality of Instruction
1144	MCS/TACs System Edits
1145	Health Insurance Portability and Accountability Act (HIPAA) EDI Front End Updates for April 2013

1146	Issued to a specific audience, not posted to Internet/Intranet due to Sensitivity of Instruction
1147	Implementation of the Revised Health Insurance Claim Form CMS-1500 (02/12) (Analysis Only)
1148	Fee for Service Beneficiary Data Streamlining (FFS BDS)
1149	Multiple Procedure Payment Reduction (MPPR) on the Technical Component (TC) of Diagnostic Cardiovascular and Ophthalmology Procedures
1150	Issued to a specific, audience not posted to Internet/Intranet due to Confidentiality of Instruction
1151	Use of Q6 Modifier for Locum Tenens by Providing Performing Provider NPI - Analysis only CR
1152	New Screens and Processes for ICD-9/ICD-10, ICD-10/ICD-9 Diagnosis and Procedure Codes Conversions for Medicare Secondary (MSP) Claims Using the General Equivalence Mappings (GEMS) 2013 Table in CWF
1153	Issued to a specific, audience not posted to Internet/Intranet due to Confidentiality of Instruction
1154	Issued to a specific, audience not posted to Internet/Intranet due to Sensitivity of Instruction
1155	Issued to a specific, audience not posted to Internet/Intranet due to Sensitivity of Instruction
1156	Addition of New Common Working File (CWF) Medicare Secondary Payer (MSP) Utilization Edit Codes for CWF to Send the Shared Systems When the Diagnosis Code on the Claim is Considered a Match with the Family of DX Codes in CWF for Non-Group Health Plan (NGHP) MSP Claims
1157	Standardizing the Standard - Phase I

Addendum II: Regulation Documents Published in the Federal Register (October through December 2012)

Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. To purchase individual copies or subscribe to the **Federal Register,** contact GPO at www.gpo.gov/fdsys. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is available as an online database through GPO Access. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) through the present date and can be accessed at http://www.gpoaccess.gov/fr/index.html. The following website http://www.archives.gov/federal-register/ provides information on how to access electronic editions, printed editions, and reference copies.

This information is available on our website at: http://www.cms.gov/quarterlyproviderupdates/downloads/Regs-4Q12QPU.pdf

For questions or additional information, contact Terri Plumb (410-786-4481).

Addendum III: CMS Rulings

CMS Rulings are decisions of the Administrator that serve as precedent final opinions and orders and statements of policy and interpretation. They provide clarification and interpretation of complex or ambiguous provisions of the law or regulations relating to Medicare, Medicaid, Utilization and Quality Control Peer Review, private health insurance, and related matters.

The rulings can be accessed at http://www.cms.gov/Rulings/CMSR/list.asp#TopOfPage. For questions or additional information, contact Tiffany Lafferty (410-786-7548).

Addendum IV: Medicare National Coverage Determinations (October through December 2012)

Addendum IV includes completed national coverage determinations (NCDs), or reconsiderations of completed NCDs, from the quarter covered by this notice. Completed decisions are identified by the section of the NCD Manual (NCDM) in which the decision appears, the title, the date the publication was issued, and the effective date of the decision. An NCD is a determination by the Secretary for whether or not a particular item or service is covered nationally under the Medicare Program (title XVIII of the Act), but does not include a determination of the code, if any, that is assigned to a particular covered item or service, or payment determination for a particular covered item or service. The entries below include information concerning completed decisions, as well as sections on program and decision memoranda, which also announce decisions or, in some cases, explain why it was not appropriate to issue an NCD. Information on completed decisions as well as pending decisions has also been posted on the CMS website. For the purposes of this quarterly notice, we list only the specific updates that have occurred in the 3-month period. This information is available on our website at: www.cms.gov/medicare-coverage-database/. For questions or additional information, contact Wanda Belle (410-786-7491).

Title	NCDM Section	Transmittal Number	Issue Date	Effective Date
Update to Pub. 100-08, Program Integrity Manual, Chapter 13	n/a	R443PI	12/14/2012	01/15/2013
Transcutaneous Electrical Nerve	NCD	R149NCD	11/30/2012	06/08/2012

Stimulation (TENS) Chronic Low Back Pain	160.27			
Transcatheter Aortic Valve Replacement (TAVR) Bariatric Surgery for the Treatment of Morbid Obesity National Coverage Determination, Addition of Laparoscopic Sleeve Gastrostomy (LSG)	NCD 100.1	R148NCD	11/09/2012	06/27/2012

Addendum V: FDA-Approved Category B Investigational Device Exemptions (IDEs) (October through December 2012)

Addendum V includes listings of the FDA-approved investigational device exemption (IDE) numbers that the FDA assigns. The listings are organized according to the categories to which the devices are assigned (that is, Category A or Category B), and identified by the IDE number. For the purposes of this quarterly notice, we list only the specific updates to the Category B IDEs as of the ending date of the period covered by this notice and a contact person for questions or additional information. For questions or additional information, contact John Manlove (410-786-6877).

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c) devices fall into one of three classes. To assist CMS under this categorization process, the FDA assigns one of two categories to each FDA-approved investigational device exemption (IDE). Category A refers to experimental IDEs, and Category B refers to non-experimental IDEs. To obtain more information about the classes or categories, please refer to the notice published in the April 21, 1997 **Federal Register** (62 FR 19328).

IDE	Device	Start Date
BB15207	Magnetic-Activated Cell Sorter (CliniMACS, Miltenyi)	10/09/12
G100294	Glucose Monitoring System	11/08/12
G110104	Medtronic Activa SC Implantable Neurostimulation System	11/20/12
G110127	Carotid Stent	12/13/12
G110139	Revive SE Thrombectomy Device	11/30/12
G110190	Tandem Heart System	11/08/12
G110228	Zilver Vena Venous Stent	12/13/12
G110238	Cobalt Stage One Acrylic Spacer Cement	10/03/12
G110246	Surgimend PRS Fetal Bovine	11/28/12
G120002	Absorb Bioresorbable Vascular Scaffold	12/14/12
G120090	Libra Implantable Deep Brain Stimulation System for Adjunctive Treatment for Treatment Resistance Major Depression	10/05/12
G120091	Tecnis Multifocal Low-Add 1-Piece Intraocular Lenses (IOLS), Modelss ZKB00 and ZLB00	10/17/12
G120110	Prostate Artery Embolization Device	10/11/12
G120111	Microvention Flow Re-Directional Endoluminal Device (FRED)	11/15/12
G120121	Randomized, Double-Blinded, Sham Controlled Trial of Repetitive Transcranial Magnetic Stimulation in Depressed	10/09/12
G120156	Activa Parkinsons Control Therapy	11/07/12
G120159	Impella RP System	11/08/12
G120168	ESVS Mesh	11/06/12
G120192	IBV Valve System	11/02/12
G120204	Venaseal Sapheon Closure System	12/13/12
G120207	Cool Path Ablation Catheter	11/20/12
G120208	Acrysof IQ Restor +8 Multifocal Intraocular Lens	11/13/12
G120211	Evolution Esophageal Stent System-Fully Covered	10/17/12
G120212	Model 106 With Automatic Stimulation	10/18/12
G120213	Attain Performa Quadripolar Lead	10/19/12
G120214	Nucleus 24 Auditory Brainstem Implant	10/19/12
G120221	Belt Applicator for Non-Invasive Fat Reduction In The Outter Thigh	12/28/12
G120222	Med IC Pharmdx Kit	10/26/12
G120223	Solidalrity Oral Endotracheal Tube Stabilizer	10/26/12
G120226	EENTOVIS MR Conditional System	12/21/12
G120233	Small-Molecule Functional Kinase Inhibitor Screen	11/09/12
G120234	Nucleus CI422	11/14/12
G120237	SIR-Spheres Microspheres	11/14/12
G120238	NRAS Mutation Clinical Trial Assay (CTA)	11/14/12
G120245	Tissuglu	11/20/12
G120246	Exablate Transcranial MRGFUS Thalmotomy Treatment	11/21/12
G120247	Reset-VT	11/20/12
G120249	Durolane 4.5 ML	11/21/12
G120260	Activated HH Pathway Gene Expression Test iD	12/05/12
G120261	NASH/DX Solesta	12/04/12
G120262	Enlite Glucose Sensor	12/05/12
G120265	Lenstec Tetraflex HD Posterior Chamber Intraocular Lens (IOL)	12/07/12
G120267	Zenith T-Branch	12/12/12
G120271	VYSIS CLL CDX FISH KIT (List Number: 07N67-020)	12/19/12
G120273	Sebacia's Acne Treatment System (SATS)	12/20/12
G120277	Heartmate II Left Ventricular Assist System	12/20/12
G120282	Epicel	12/19/12

Addendum VI: Approval Numbers for Collections of Information (October through December 2012)

All approval numbers are available to the public at Reginfo.gov. Under the review process, approved information collection requests are assigned OMB control numbers. A single control number may apply to several related information collections. This information is available at www.reginfo.gov/public/do/PRAMain. For questions or additional information, contact Mitch Bryman (410-786-5258).

Addendum VII: Medicare-Approved Carotid Stent Facilities, (October through December 2012)

Addendum VII includes listings of Medicare-approved carotid stent facilities. All facilities listed meet CMS standards for performing carotid artery stenting for high risk patients. On March 17, 2005, we issued our decision memorandum on carotid artery stenting. We determined that carotid artery stenting with embolic protection is reasonable and necessary only if performed in facilities that have been determined to be competent in performing the evaluation, procedure, and follow-up necessary to ensure optimal patient outcomes. We have created a list of minimum standards for facilities modeled in part on professional society statements on competency. All facilities must at least meet our standards in order to receive coverage for carotid artery stenting for high risk patients. For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period. This information is available on our website at: http://www.cms.gov/MedicareApprovedFacilitie/CASF/list.asp#TopOfPage For questions or additional information, contact Sarah J. McClain (410-786-2294).

Facility	Provider Number	Effective Date	State
The following facilities are new listings for this quarter.			
Ephraim McDowell Regional Medical Center 217 South Third Street Danville, KY 40422	180048	09/28/2012	KY
UC San Diego Sulpizio Cardiovascular Center 9434 Medical Center Drive La Jolla, CA 92037	050025	10/24/2005	CA
Monroe Clinic 515 22nd Avenue Monroe, WI 53566	520028	10/12/2012	WI
Northside Hospital Forsyth 1200 Northside Forsyth Drive Cumming, GA 30041	1376574277	10/31/2012	GA
Spring Valley Hospital Medical Center 5400 South Rainbow Boulevard Las Vegas, NV 89118	1346230323	11/16/2012	NV
Marian Regional Medical Center 1400 East Church Street Santa Maria, CA 93454	050107	12/28/2012	CA
Editorial changes (shown in bold) were made to the facilities listed below.			
FROM: UCSD La Jolla - John M. and Sally B. Thornton Hospital **TO: UC San Diego Thornton Hospital** 9300 Campus Point Drive La Jolla, CA 92037	050025	10/24/2005	CA
FROM: University of California San Diego Medical Center **TO: UC San Diego Medical Center** 200 W. Arbor Drive San Diego, CA 92103	050025	10/24/2005	CA
FROM: St. Joseph's Healthcare **TO: Henry Ford Macomb Hospitals** 15855 Nineteen Mile Road Clinton Township, MI 48038	230047	11/28/2005	MI

Addendum VIII: American College of Cardiology's National Cardiovascular Data Registry Sites (October through December 2012)

Addendum VIII includes a list of the American College of Cardiology's National Cardiovascular Data Registry Sites. We cover implantable cardioverter defibrillators (ICDs) for certain clinical indications, as long as information about the procedures is reported to a central registry. Detailed descriptions of the covered indications are available in the NCD. In January 2005, CMS established the ICD Abstraction Tool through the Quality Network Exchange (QNet) as a temporary data collection mechanism. On October 27, 2005, CMS announced that the American College of Cardiology's National Cardiovascular Data Registry (ACC-NCDR) ICD Registry satisfies the data reporting requirements in the NCD. Hospitals needed to transition to the ACC-NCDR ICD Registry by April 2006.

Effective January 27, 2005, to obtain reimbursement, Medicare NCD policy requires that providers implanting ICDs for primary prevention clinical indications (that is, patients without a history of cardiac arrest or spontaneous arrhythmia) report data on each primary prevention ICD procedure. Details of the clinical indications that are covered by Medicare and their respective data reporting requirements are available in the Medicare NCD Manual, which is on the CMS Website at http://www.cms.hhs.gov/Manuals/IOM/itemdetail.asp?filterType=none&filterByDID=99&sortByDID=1&sortOrder=ascending&itemID=CMS014961

A provider can use either of two mechanisms to satisfy the data reporting requirement. Patients may be enrolled either in an Investigational Device Exemption trial studying ICDs as identified by the FDA or in the ACC-NCDR ICD registry. Therefore, for a beneficiary to receive a Medicare-covered ICD implantation for primary prevention, the beneficiary must receive the scan in a facility that participates in the ACC-NCDR ICD registry. The entire list of facilities that participate in the ACC-NCDR ICD registry can be found at www.ncdr.com/webncdr/common

For the purposes of this quarterly notice, we are providing only the specific updates that have occurred in the 3-month period. This information is available by accessing our website and clicking on the link for the American College of Cardiology's National Cardiovascular Data Registry at: www.ncdr.com/webncdr/common. For questions or additional information, contact Joanna Baldwin, MS (410-786-7205).

Facility	City	State
The following facilities are new listings for this quarter.		
Sacred Heart on the Emerald Coast	Miramar Beach	FL
Kennewick General Hospital	Kennewick	WA
Einstein Medical Center Montgomery	East Norriton	PA
Gulf Pointe Surgery Center	Port Charlotte	FL
The following facilities are terminated as of this quarter.		
St. Vincent Dunn Hospital	Bedford	IN
Carondelet Heart and Vascular Institute	Tucson	AZ
Northern Louisiana Medical Center	Ruston	LA
Dyersburg Regional Medical Center	Dyersburg	TN

Addendum IX: Active CMS Coverage-Related Guidance Documents (October through December 2012)

There was one CMS coverage-related guidance documents published in the October through December 2012 quarter. To obtain the document, visit the CMS coverage website at http://www.cms.gov/medicare-coverage-database/details/medicare-coverage-document-details.aspx?MCDId=23. For questions or additional information, contact Lori Ashby (410-786-6322).

Addendum X: List of Special One-Time Notices Regarding National Coverage Provisions (October through December 2012)

There were no special one-time notices regarding national coverage provisions published in the October through December 2012 quarter. This information is available at www.cms.hhs.gov/coverage. For questions or additional information, contact Lori Ashby (410-786-6322).

Addendum XI: National Oncologic PET Registry (NOPR) (October through December 2012)

Addendum XI includes a listing of National Oncologic Positron Emission Tomography Registry (NOPR) sites. We cover positron emission tomography (PET) scans for particular oncologic indications when they are performed in a facility that participates in the NOPR.

In January 2005, we issued our decision memorandum on **positron emission tomography** (PET) scans, which stated that CMS would cover PET scans for particular oncologic indications, as long as they were performed in the context of a clinical study. We have since recognized the National Oncologic PET Registry as one of these clinical studies. Therefore, in order for a beneficiary to receive a Medicare-covered PET scan, the beneficiary must receive the scan in a facility that participates in the registry. There were no updates to the listing of National Oncologic Positron Emission Tomography Registry (NOPR) in the October through December 2012 quarter. This information is available at http://www.cms.gov/MedicareApprovedFacilitie/NOPR/list.asp#TopOfPage. For questions or additional information, contact Stuart Caplan, RN, MAS (410-786-8564)

Facility	Provider Number	Effective Date	State
Editorial changes (shown in bold) were made to the facilities listed below.			
FROM: Hospital of Saint Raphael **TO: YNHH- St. Raphael Campus** 1450 Chapel Street New Haven, CT 05611	070022	03/06/2007	CT

Addendum XII: Medicare-Approved Ventricular Assist Device (Destination Therapy) Facilities (October through December 2012)

Addendum XII includes a listing of Medicare-approved facilities that receive coverage for ventricular assist devices (VADs) used as destination therapy. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy. On October 1, 2003, we issued our decision memorandum on VADs for the clinical indication of destination therapy. We determined that VADs used as destination therapy are reasonable and necessary only if performed in facilities that have been determined to have the experience and infrastructure to ensure optimal patient outcomes. We established facility standards and an application process. All facilities were required to meet our standards in order to receive coverage for VADs implanted as destination therapy.

For the purposes of this quarterly notice, we are providing only the specific updates that have occurred to the list of Medicare-approved facilities that meet our standards in the 3-month period. This information is available on our website at http://www.cms.gov/MedicareApprovedFacilitie/VAD/list.asp#TopOfPage. For questions or additional information, contact JoAnna Baldwin, MS (410-786-7205).

Facility	Provider Number	Date Approved	State
The following facilities are new listings for this quarter.			
The Medical Center of Central Georgia 777 Hemlock Street Macon GA 31201	110107	11/08/2012	GA
Florida Hospital 601 East Rollins Street Orlando FL 32803	100007	10/29/2012	FL
Scripps Memorial Hospital – La Jolla 9888 Genesee Avenue La Jolla, CA 92037	050324	11/26/2012	CA

Addendum XIII: Lung Volume Reduction Surgery (LVRS) (October through December 2012)

Addendum XIII includes a listing of Medicare-approved facilities that are eligible to receive coverage for lung volume reduction surgery. Until May 17, 2007, facilities that participated in the National Emphysema Treatment Trial were also eligible to receive coverage. The following three types of facilities are eligible for reimbursement for Lung Volume Reduction Surgery (LVRS):

- National Emphysema Treatment Trial (NETT) approved (Beginning 05/07/2007, these will no longer automatically qualify and can qualify only with the other programs);
- Credentialed by the Joint Commission (formerly, the Joint Commision on Accreditation of Healthcare Organizations (JCAHO)) under their Disease Specific Certification Program for LVRS; and
- Medicare approved for lung transplants.

Only the first two types are in the list. There were no additions to the listing of facilities for lung volume reduction surgery published in the October through December 2012 quarter. This information is available on our website at www.cms.gov/MedicareApprovedFacilitie/LVRS/list.asp#TopOfPage. For questions or additional information, contact JoAnna Baldwin, MS (410-786-7205).

Facility	Provider Number	Date Approved	State
The following facility is a new listing for this quarter.			
Temple University Hospital 3401 North Broad Street Philadelphia, PA 19140	3900027	11/17/2012	PA

Addendum XIV: Medicare-Approved Bariatric Surgery Facilities (October through December 2012)

Addendum XIV includes a listing of Medicare-approved facilities that meet minimum standards for facilities modeled in part on professional society statements on competency. All facilities must meet our standards in order to receive coverage for bariatric surgery procedures. On February 21, 2006, we issued our decision memorandum on bariatric surgery procedures. We determined that bariatric surgical procedures are reasonable and necessary for Medicare beneficiaries who have a body-mass index (BMI) greater than or equal to 35, have at least one co-morbidity related to obesity and have been previously unsuccessful with medical treatment for obesity. This decision also stipulated that covered bariatric surgery procedures are reasonable and necessary only when performed at facilities that are: (1) certified by the American College of Surgeons (ACS) as a Level 1 Bariatric Surgery Center (program standards and requirements in effect on February 15, 2006); or (2) certified by the American Society for Bariatric Surgery (ASBS) as a Bariatric Surgery Center of Excellence (BSCOE) (program standards and requirements in effect on February 15, 2006).

For the purposes of this quarterly notice, we list only the specific updates to Medicare-approved facilities that meet CMS's minimum facility standards for bariatric surgery and have been certified by ACS and/or ASMBS in the 3-month period. This information is available on our website at www.cms.gov/MedicareApprovedFacilitie/BSF/list.asp#TopOfPage. For questions or additional information, contact Kate Tillman, RN, MAS (410-786-9252).

Facility	Provider Number	Date Approved	State
The following facilities are new listings for this quarter.			
Duke Raleigh Hospital 3400 Wake Forest Road Raleigh, NC 27609	1013916352	07/16/2012	NC
UC San Diego Health System 200 West Arbor Drive #8401 San Diego, CA 92103	1184722779	09/06/2012	CA
Central Mississippi Medical Center 1850 Chadwick Drive Jackson, MS 39204	1033163092	08/26/2012	MS
Renown South Meadows Medical Center 10101 Double R BoulevardReno, NV 89521	1790789147	03/26/2012	NV

Jackson South Community Hospital 9333 S.W. 152nd Street Miami, FL 33157	1174601397	07/31/2012	FL
North Mississippi Medical Center 830 South Gloster Street Tupelo, MS 38801	1629049846	09/06/2012	MS
Huntington Hospital 270 Park Avenue Huntington, NY 11743	1508845322	10/06/2012	NY
UT Southwestern Medical Center 5909 Harry Hines Boulevard Dallas, TX 75235	45-0044	05/28/2012	TX
St. Vincent's Medical Center 1 Shircliff Way Jacksonville, FL 32204	590-62-4449	12/14/2012	FL
Center for Surgical Weight Management at Gwinnett Medical Center – Duluth 3855 Pleasant Hill Road, Suite 210 Duluth, GA 30096	1790715381	11/15/2012	GA
Editorial changes (shown in bold) were made to the facilities listed below.			
Grinnell Regional Medical Center 210 Fourth Avenue Grinnell, IA 50112	1669420501	**10/20/2012**	IA
FROM: SUNY Upstate Medical University **TO: Upstate Medical University** 750 E. Adams Street, University Hospital Syracuse, NY 13210	1578554630	03/27/2009	NY
FROM: Marshall Medical Center North **TO: Marshall Medical Centers** **11491 US Hwy 431** **Guntersville, AL 35950**	**01-0005**	04/19/2010	AL
FROM: Charleston Area Medical Center, Women and Children's Hospital **TO: Charleston Area Medical Center, General Hospital** 501 Morris Street Charleston, WV 25301	510022	04/04/2007	WV
Oregon Health & Science University 3181 SW Sam Jackson Park Road, L223A Portland, OR 97239	107708, 380009; 1609824010	**06/27/2012**	OR
Heartland Regional Medical Center **5325 Faraon Street** **Saint Joseph, MO 64506**	260006	01/20//2012	MO
FROM: St. John's Regional Health Center **TO: Mercy Hospital, Springfield** 1235 E. Cherokee Springfield, MO 65804	260065	03/05/2008	MO
Beth Israel Deaconess Medical Center 330 Brookline Avenue Boston, MA 02215	04-2103881	**02/18/2012**	MA
University of North Carolina **101 Manning Drive Chapel Hill, NC 27599**	1932208576	08/23/2010	NC
Sentara Norfolk General Hospital 600 Gresham Drive Norfolk, VA 23507	4900073	**09/30/2012**	VA
Newton-Wellesley Hospital 2014 Washington Street Newton, MA 02462	**1992737761**	**10/26/2012**	MA
Our Lady of Lourdes Regional Medical **4801 Ambassador Caffery Parkway** **Lafayette, Louisiana 70506**	190102	05/24/2010	LA
UMass Memorial Medical Center-Memorial Campus **55 Lake Avenue North; Room H1-760** **Worcester, MA 01655**	1831151455	**07/27/2012**	MA
Kaiser Permanente South Bay 25825 S. Vermont Avenue Harbor City, CA 90710	1336294040; 05-0411	**08/06/2012**	CA
Cleveland Clinic Florida 3100 Weston Road Weston, FL 33331	**100289,** **1083644033**	**10/19/2012**	FL
Sinai Hospital of Baltimore 2435 W. Belvedere Avenue Baltimore, MD 21215	1285672204	**09/25/2012**	MD
Highland Hospital 1000 South Avenue Rochester, NY 14620	330164 NPI# 1497941645	**08/30/2012**	NY
Saint Francis Hospital 6161 South Yale Avenue Tulsa, OK 74136	**370091;** **1144228487**	**10/24/2012**	OK
Hackensack University Medical Center 30 Prospect Avenue Hackensack, NJ 07601	**1457456279**	**12/09/2012**	NJ
FROM: Pitt County Memorial Hospital **TO: Vidant Medical Center** 2100 Stantonsburg Road Greenville, NC 27835	340040	02/12/2007	NC
Princeton Baptist Medical Center 917 Tuscaloosa Avenue, SW Birmingham, AL 35211	1144312430	**07/01/2012**	AL
Community Medical Center-Clovis 2755 Herndon Avenue Clovis, CA 93611	050492; CMS# 1316027709	**06/27/2012**	CA
Saint Luke's Hospital of Kansas City 4401 Wornall Road Kansas City, MO	**26-0138**	**01/02/2010**	MO
The following facilities are no longer participants as of this notice.			
River Oaks Hospital Flowood, MS	250138		MS
West Hills Hospital and Medical Center West Hills, CA	050481		CA
Phoebe North Campus Albany, GA	110163		GA
AnMed Health Medical Center Anderson, SC	420027		SC
Fletcher Allen Health Care 111 Colchester Avenue Burlington, VT 05401	470003		VT
Kettering Medical Center Kettering, OH	360079		OH

Addendum XV: FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials (October through December 2012)

There were no FDG-PET for Dementia and Neurodegenerative Diseases Clinical Trials published in the October through December 2012 quarter.

This information is available on our website at www.cms.gov/MedicareApprovedFacilitie/PETDT/list.asp#TopOfPage. For questions or additional information, contact Stuart Caplan, RN, MAS (410-786-8564).

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1438–N]

Medicare Program; Public Meetings in Calendar Year 2013 for All New Public Requests for Revisions to the Healthcare Common Procedure Coding System (HCPCS) Coding and Payment Determinations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the dates, time, and location of the Healthcare Common Procedure Coding System (HCPCS) public meetings to be held in calendar year 2013 to discuss our preliminary coding and payment determinations for all new public requests for revisions to the HCPCS. These meetings provide a forum for interested parties to make oral presentations or to submit written comments in response to preliminary coding and payment determinations. The discussion will be focused on responses to our specific preliminary recommendations and will include all items on the public meeting agenda.

DATES: *Meeting Dates:* The following are the 2013 HCPCS public meeting dates:

1. Wednesday, May 8, 2013, 9 a.m. to 5 p.m., eastern daylight time (e.d.t.) (Drugs/Biologicals/ Radiopharmaceuticals/Radiologic Imaging Agents).

2. Thursday, May 9, 2013, 9 a.m. to 5 p.m., e.d.t. (Drugs/Biologicals/ Radiopharmaceuticals/Radiologic Imaging Agents).

3. Wednesday, May 29, 2013, 9 a.m. to 5 p.m., e.d.t. (Supplies and Other).

4. Tuesday, June 4, 2013, 9 a.m. to 5 p.m., e.d.t. (Durable Medical Equipment (DME) and Accessories & (Orthotics and Prosthetics)).

Deadlines for Primary Speaker Registration and Presentation Materials: The deadline for registering to be a primary speaker and submitting materials and writings that will be used in support of an oral presentation are as follows:

- April 24, 2013 for the May 8, 2013 and May 9, 2013 public meetings.
- May 15, 2013 for the May 29, 2013 public meeting.
- May 22, 2013 for the June 4, 2013 public meeting.

Deadline for Attendees that are Foreign Nationals Registration: Attendees that are foreign nationals (as described in section IV. of this notice) are required to identify themselves as such, and provide the necessary information for security clearance (as described in section IV. of this notice) to the public meeting coordinator at least 12 business days in advance of the date of the public meeting date the individual plans to attend. Therefore, the deadlines for attendees that are foreign nationals are as follows:

- April 22, 2013 for the May 8, 2013 and May 9, 2013 public meetings.
- May 10, 2013 for the May 29, 2013 public meeting.
- May 16, 2013 for the June 4, 2013 public meeting.

Deadlines for all Other Attendees Registration: All other individuals who plan to enter the building to attend the public meeting must register for each date that they plan on attending. The registration deadlines are different for each meeting. Registration deadlines are as follows:

- May 1, 2013 for the May 8, 2013 and May 9, 2013 public meeting dates.
- May 22, 2013 for the May 29, 2013 public meeting date.
- May 29, 2013 for the June 4, 2013 public meeting date.

Deadlines for Requesting Special Accommodations: Individuals who plan to attend the public meetings and require sign-language interpretation or other special assistance must request these services by the following deadlines:

- April 24, 2013 for the May 8, 2013 and May 9, 2013 public meetings.
- May 15, 2013 for the May 29, 2013 public meeting.
- May 22, 2013 for the June 4, 2013 public meeting.

Deadline for Submission of Written Comments: Written comments must be received by the date of the meeting at which the code request is scheduled for discussion.

ADDRESSES: *Meeting Location:* The public meetings will be held in the main auditorium of the central building of the Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Submission of Written Comments: Written comments may either be emailed to *HCPCS@cms.hhs.gov* or sent via regular mail to Jennifer Carver or Kimberlee Combs Miller, HCPCS Public Meeting Coordinator, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail Stop C5–08–27, Baltimore, MD 21244–1850.

Registration and Special Accommodations: Individuals wishing to participate or who need special accommodations or both must register by completing the on-line registration located at *www.cms.hhs.gov/medhcpcsgeninfo* or by contacting one of the following persons: Jennifer Carver at (410) 786–6610 or *Jennifer.Carver@cms.hhs.gov;* or Kimberlee Combs Miller at (410) 786–6707 or *Kimberlee.CombsMiller@cms.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Jennifer Carver at (410) 786–6610 or *Jennifer.Carver@cms.hhs.gov.* Kimberlee Combs Miller at (410) 786–6707 or *Kimberlee.CombsMiller@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000, the Congress passed the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554). Section 531(b) of BIPA mandated that we establish procedures that permit public consultation for coding and payment determinations for new durable medical equipment (DME) under Medicare Part B of title XVIII of the Social Security Act (the Act). The procedures and public meetings announced in this notice for new DME are in response to the mandate of section 531(b) of BIPA.

In the November 23, 2001 **Federal Register** (66 FR 58743), we published a notice providing information regarding the establishment of the public meeting process for DME. It is our intent to distribute any materials submitted to CMS to the Healthcare Common Procedure Coding System (HCPCS) workgroup members for their consideration. CMS and the HCPCS workgroup members require sufficient preparation time to review all relevant materials. Therefore, we are implementing a 10-page submission limit and firm deadlines for receipt of any presentation materials a meeting speaker wishes us to consider. For this reason, our HCPCS Public Meeting Coordinators will only accept and review presentation materials received by the deadline for each public meeting, as specified in the **DATES** section of this notice.

The public meeting process provides an opportunity for the public to become aware of coding changes under consideration, as well as an opportunity for CMS to gather public input.

II. Meeting Registration

A. Required Information for Registration

The following information must be provided when registering:

- Name.
- Company name and address.
- Direct-dial telephone and fax numbers.

- Email address.
- Special needs information.

A CMS staff member will confirm your registration by email.

B. Registration Process

1. Primary Speakers

Individuals must also indicate whether they are the ''primary speaker'' for an agenda item. Primary speakers must be designated by the entity that submitted the HCPCS coding request. When registering, primary speakers must provide a brief written statement regarding the nature of the information they intend to provide, and advise the HCPCS Public Meeting Coordinator regarding needs for audio/visual support. To avoid disruption of the meeting and ensure compatibility with our systems, tapes and disk files are tested and arranged in speaker sequence well in advance of the meeting. We will accept tapes and disk files that are received by the deadline for submissions for each public meeting as specified in the **DATES** section of this notice. The sum of all materials including the presentation may not exceed 10 pages (each side of a page counts as 1 page). An exception will be made to the 10-page limit for relevant studies published between the application deadline and the public meeting date, in which case, we would like a copy of the complete publication as soon as possible. This exception applies only to the page limit and not the submission deadline.

The materials may be emailed or delivered by regular mail to one of the HCPCS Public Meeting Coordinators as specified in the **ADDRESSES** section of this notice. The materials must be emailed or postmarked no later than the deadline specified in the **DATES** section of this notice. Individuals will need to provide 35 copies if materials are delivered by mail.

2. 5-Minute Speakers

To afford the same opportunity to all attendees, 5-minute speakers are not required to register as primary speakers. However, 5-minute speakers must still register as attendees by the deadline set forth under ''Deadlines for all Other Attendees Registration'' in the **DATES** section of this notice. Attendees can sign up only on the day of the meeting to do a 5-minute presentation. Individuals must provide their name, company name and address, contact information as specified on the sign-up sheet, and identify the specific agenda item that they will address.

C. Additional Meeting/Registration Information

We were able this year to combine the Orthotics/Prosthetics and DME meeting into one public meeting date. That public meeting will be Tuesday, June 4, 2013.

The product category reported by the applicant may not be the same as that assigned by us. Prior to registering to attend a public meeting, all participants are advised to review the public meeting agendas at *www.cms.hhs.gov/medhcpcsgeninfo* which identify our category determinations, and the dates each item will be discussed. Draft agendas, including a summary of each request and our preliminary decision will be posted on our HCPCS Web site at *www.cms.hhs.gov/medhcpcsgeninfo* at least 4 weeks before each meeting.

Additional details regarding the public meeting process for all new public requests for revisions to the HCPCS, along with information on how to register and guidelines for an effective presentation, will be posted at least 4 weeks before the first meeting date on the official HCPCS Web site at *www.cms.hhs.gov/medhcpcsgeninfo.* The document titled ''Guidelines for Participation in Public Meetings for All New Public Requests for Revisions to the Healthcare Common Procedure Coding System (HCPCS)'' will be made available on the HCPCS Web site at least 4 weeks before the first public meeting in 2013 for all new public requests for revisions to the HCPCS. Individuals who intend to provide a presentation at a public meeting will need to familiarize themselves with the HCPCS Web site and the valuable information it provides to prospective registrants. The HCPCS Web site also contains a document titled ''Healthcare Common Procedure Coding System (HCPCS) Level II Coding Procedures,'' which is a description of the HCPCS coding process, including a detailed explanation of the procedures used to make coding determinations for all the products, supplies, and services that are coded in the HCPCS.

The HCPCS Web site also contains a document titled ''HCPCS Decision Tree & Definitions'' which illustrates, in a flow diagram format, HCPCS coding standards as described in our Coding Procedures document.

A summary of each public meeting will be posted on the HCPCS Web site by the end of August 2013.

III. Presentations and Comment Format

We can only estimate the amount of meeting time that will be needed since it is difficult to anticipate the total number of speakers that will register for each meeting. Meeting participants should arrive early to allow time to clear security and sign-in. Each meeting is expected to begin promptly as scheduled. Meetings may end earlier than the stated ending time.

A. Oral Presentation Procedures

All primary speakers must register as provided under the section titled ''Meeting Registration.'' Materials and writings that will be used in support of an oral presentation should be submitted to one of the HCPCS Public Meeting Coordinators.

The materials may be emailed or delivered by regular mail to one of the HCPCS Public Meeting Coordinators as specified in the **ADDRESSES** section of this notice. The materials must be emailed or postmarked no later than the deadline specified in the **DATES** section of this notice. Individuals will need to include 35 copies if materials are delivered by mail.

B. Primary Speaker Presentations

The individual or entity requesting revisions to the HCPCS coding system for a particular agenda item may designate one ''primary speaker'' to make a presentation for a maximum of 15 minutes. Fifteen minutes is the total time interval for the presentation, and the presentation must incorporate the demonstration, set-up, and distribution of material. In establishing the public meeting agenda, we may group multiple, related requests under the same agenda item. In that case, we will decide whether additional time will be allotted, and may opt to increase the amount of time allotted to the speaker by increments of less than 15 minutes.

Individuals designated to be the primary speaker must register to attend the meeting using the registration procedures described under the ''Meeting Registration'' section of this notice and contact one of the HCPCS Public Meeting Coordinators, specified in the **ADDRESSES** section. Primary speakers must also separately register as primary speakers by the date specified in the **DATES** section of this notice.

C. ''5-Minute'' Speaker Presentations

Meeting attendees can sign up at the meeting, on a first-come, first-served basis, to make 5-minute presentations on individual agenda items. Based on the number of items on the agenda and the progress of the meeting, a determination will be made at the meeting by the meeting coordinator and the meeting moderator regarding how many 5-minute speakers can be accommodated.

D. Speaker Declaration

On the day of the meeting, before the end of the meeting, all primary speakers and 5-minute speakers must provide a brief written summary of their comments and conclusions to the HCPCS Public Meeting Coordinator.

Each primary speaker and 5-minute speaker must declare in their presentation at the meeting, as well as in their written summary, whether they have any financial involvement with the manufacturers or competitors of any items being discussed; this includes any payment, salary, remuneration, or benefit provided to that speaker by the manufacturer or the manufacturer's representatives.

E. Written Comments From Meeting Attendees

Written comments will be accepted from the general public and meeting registrants anytime up to the date of the public meeting at which a request is discussed. Comments must be sent to the address listed in the **ADDRESSES** section of this notice.

Meeting attendees may also submit their written comments at the meeting. Due to the close timing of the public meetings, subsequent workgroup reconsiderations, and final decisions, we are able to consider only those comments received in writing by the close of the public meeting at which the request is discussed.

IV. Security, Building, and Parking Guidelines

The meetings are held within the CMS Complex which is not open to the general public. Visitors to the complex are required to show a valid U.S. Government issued photo identification, preferably a driver's license, at the time of entry. Participants will also be subject to a vehicular search before access to the complex is granted. Participants not in possession of a valid identification or who are in possession of prohibited items will be denied access to the complex. Prohibited items on Federal property include but are not limited to, alcoholic beverages, illegal narcotics, explosives, firearms or other dangerous weapons (including pocket knives), dogs or other animals except service animals. Once cleared for entry to the complex participants will be directed to parking by a security officer.

In order to ensure expedited entry into the building it is recommended that participants have their ID and a copy of their written meeting registration confirmation readily available and that they do not bring laptops or large/bulky items into the building. Participants are reminded that photography on the CMS complex is prohibited. CMS has also been declared a tobacco free campus and violators are subject to legal action. In planning arrival time, we recommend allowing additional time to clear security. Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 45 minutes before the convening of the meeting each day.

Guest access to the complex is limited to the meeting area, the main lobby, and the cafeteria. If a visitor is found outside of those areas without proper escort they may be escorted out of the facility. Also be mindful that there will be an opportunity for everyone to speak and we request that everyone waits for the appropriate time to present their product or opinions. Disruptive behavior will not be tolerated and may result in removal from the meetings and escort from the complex. No visitor is allowed to attach USB cables, thumb drives or any other equipment to any CMS information technology (IT) system or hardware for any purpose at anytime. Additionally, CMS staff is prohibited from taking such actions on behalf of a visitor or utilizing any removable media provided by a visitor.

We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a presentation. Special arrangements and approvals are required at least 2 weeks prior to each public meeting in order to bring pieces of equipment or medical devices. These arrangements need to be made with the public meeting coordinator. It is possible that certain requests made in advance of the public meeting could be denied because of unique safety, security or handling issues related to the equipment. A minimum of 2 weeks is required for approvals and security procedures. Any request not submitted at least 2 weeks in advance of the public meeting will be denied.

CMS policy requires that every foreign national (as defined by the Department of Homeland Security is ''an individual who is a citizen of any country other than the United States'') is assigned a host (in accordance with the Department Foreign Visitor Management Policy, Appendix C, Guidelines for Hosts and Escorts). The host/hosting official is required to inform the Division of Critical Infrastructure Protection (DCIP) at least 12 business days in advance of any visit by a foreign national. Foreign nationals will be required to produce a valid passport at the time of entry.

Attendees that are foreign nationals need to identify themselves as such, and provide the following information for security clearance to the public meeting coordinator by the date specified in the **DATES** section of this notice:

- Visitor's full name (as it appears on passport).
- Gender.
- Country of origin and citizenship.
- Biographical data and related information.
- Date of birth.
- Place of birth.
- Passport number.
- Passport issue date.
- Passport expiration date.
- Dates of visits.
- Company Name.
- Position/Title.

Dated: February 8, 2013.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2013–03479 Filed 2–14–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0145]

Accreditation and Reaccreditation Process for Firms Under the Third Party Review Program: Part I; Draft Guidance for Industry, Food and Drug Administration Staff, and Third Party Reviewers; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Accreditation and Reaccreditation Process for Firms Under the Third Party Review Program: Part I.'' The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Food and Drug Administration Safety and Innovation Act (FDASIA), requires FDA to establish and publish criteria to reaccredit or deny reaccreditation to persons accredited by FDA under the FD&C Act to perform premarket review of medical devices. This draft guidance describes the accreditation, reaccreditation, and accreditation withdrawal processes, including criteria that will be considered to accredit, reaccredit, deny accreditation to, and deny reaccreditation to third party

reviewers under the Third Party Review Program. The criteria will facilitate international harmonization and, thereby, in the future, allow us to leverage resources with those of regulating bodies in other countries. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by April 16, 2013.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''Accreditation and Reaccreditation Process for Firms Under the Third Party Review Program: Part I'' to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Scott McFarland, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5543, Silver Spring, MD 20993, 301–796–6217.

SUPPLEMENTARY INFORMATION:

I. Background

The FD&C Act, as amended by FDASIA, requires FDA to establish and publish criteria to reaccredit and deny reaccreditation to third parties accredited under section 523 of the FD&C Act (21 U.S.C. 360m) to perform premarket review of class I and eligible class II premarket notification (510(k)) submissions. This draft guidance describes the accreditation, reaccreditation, and accreditation withdrawal processes, including criteria that will be considered to accredit, reaccredit, deny accreditation to, and deny reaccreditation to firms under the Third Party Review Program (TPRP).

The International Medical Device Regulators Forum (IMDRF) recently issued a proposed draft document entitled ''Recognition Criteria for Medical Device Auditing Organizations'' (IMDRF document), available at *www.imdrf.org/docs/imdrf/final/consultations/imdrf-mdsap-criteria.pdf*. The IMDRF was conceived in February 2011 as a forum to discuss future directions in medical device regulatory harmonization. It is a voluntary group of medical device regulators from around the world, which includes FDA, who have come together to build on the strong foundational work of the Global Harmonization Task Force on Medical Devices. The purpose of the IMDRF is to accelerate international medical device regulatory harmonization and convergence (see *http://www.imdrf.org*).

The IMDRF draft document reflects the group's effort to develop the foundations for a Single Audit Program for medical devices that includes criteria for the recognition and rerecognition of third party auditing organizations. (The IMDRF document refers to the ''recognition'' of third parties, whereas the FD&C Act refers to the ''accreditation'' of third parties.) The IMDRF document includes criteria used or proposed by member countries for conformity assessment bodies and third party reviewers. The IMDRF also plans to incorporate specific requirements for competency and considerations for codes of conduct that together will constitute the basis for the recognition of third party auditors under a Single Audit Program. When finalized and adopted, this document will represent a harmonized standard for participating countries and could be useful to FDA to the extent consistent with the FD&C Act and other relevant laws and regulations.

In an effort to develop accreditation and reaccreditation criteria that could be used in the future for a harmonized TPRP, in this draft guidance we use recognition criteria described in the IMDRF document as part of the criteria for third party accreditation by FDA. We intend to incorporate information from the IMDRF document in a subsequent draft guidance to the extent appropriate as part of the criteria for accreditation and reaccreditation of reviewers under the TPRP.

We plan to update and re-issue this guidance in draft again for further comment once the IMDRF has finalized the IMDRF document, which is expected to be in December 2013. This guidance does not address accreditation of inspectors under the FDA Third Party Inspection Program.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on the accreditation and reaccreditation process for firms under the TPRP. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm*. Guidance documents are also available at *http://www.regulations.gov*. To receive ''Accreditation and Reaccreditation Process for Firms Under the Third Party Review Program: Part I,'' you may either send an email request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1815 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3502), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing this notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Accreditation and Reaccreditation Process for Firms Under the Third Party Review Program:

Part I: Draft Guidance for Industry and Food and Drug Administration Staff

This draft guidance describes revised accreditation, new reaccreditation, and accreditation withdrawal processes, including criteria that will be considered to accredit, reaccredit, deny accreditation to, and deny reaccreditation to third party reviewers under the TPRP. The guidance provides recommendations regarding the information that should be submitted for consideration to accredit and reaccredit. This guidance when finalized, will revise the collections of information for FDA's Third Party Review Program, OMB control number 0910–0375.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Submission of information for accreditation program	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
Requests for accreditation (current requirement)	1	1	1	24	24
Requests for reaccreditation (proposed requirement)	4	1	4	24	96
510(k) reviews conducted by accredited third parties (current requirement)	10	26	260	40	10,400
Total					10,520

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Retention of information for reaccreditation program	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
510(k) reviews (current requirements)	10	26	260	10	2,600
Reaccreditation documentation	10	1	10	10	100
Total					2,700

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Currently approved collection requirements:

1. Reporting

a. Requests for accreditation: In the past 3 years, the Agency has averaged receipt of one application for accreditation for third party review.

b. Premarket notification (510(k)) reviews conducted by accredited third parties: According to FDA's data in 2009, the Agency has experienced that the number of 510(k)s submitted for third-party review is approximately 260 annually, which is 26 annual reviews per each of the 10 accredited reviewers.

2. Recordkeeping

a. Third party reviewers are required to keep records of their review of each submission. According to FDA's in 2009, the Agency anticipates approximately 260 submissions of 510(k)s for third party review per year.

Proposed revisions to currently approved collection:

1. Reporting

a. Requests for reaccreditation: The Agency anticipates an average receipt of four applications for reaccreditation for third party review.

2. Record retention

a. Record retention related to reaccreditation program: The Agency anticipates that there will be a requirement to retain documentation to support reaccreditation.

The respondents for this information collection are private sector, for-profit firms seeking accreditation and reaccreditation to participate as third party reviewers to review 510(k)s for certain low-to-moderate risk devices. FDA estimates that it will receive approximately four requests for reaccreditation annually. The Agency reached this estimate by reviewing the number of existing accredited firms under the TPRP program and prorating the reaccreditation of each firm every 3 years.

FDA estimates from past experiences involving the accreditation and TPRP processes that requests will take approximately 24 hours per respondent. This average is based upon estimates by FDA administrative and technical staff who are familiar with the requirements for accreditation and reaccreditation under the TPRP. FDA requests comments on these estimates and the methodology used to estimate the burdens.

V. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is necessary to send only one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

Dated: February 11, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–03538 Filed 2–14–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0395]

Clinical Study Designs for Surgical Ablation Devices for Treatment of Atrial Fibrillation; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Clinical Study Designs for Surgical Ablation Devices for Treatment of Atrial Fibrillation.'' This guidance provides FDA's recommendations on clinical trial designs for surgical ablation devices intended for the treatment of atrial fibrillation.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Clinical Study Designs for Surgical Ablation Devices for Treatment of Atrial Fibrillation'' to the Division of Small Manufacturers, International and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Libet Garber, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1254, Silver Spring, MD 20993–0002, 301–796–6912.

SUPPLEMENTARY INFORMATION:

I. Background

Atrial fibrillation (AF) is a complex arrhythmia of the heart. This guidance describes elements of suggested clinical study design for surgical ablation devices used to treat patients with longstanding persistent AF and patients with symptomatic paroxysmal AF, such as inclusion and exclusion criteria and assessment of effectiveness, which may differ for these patient populations. In the **Federal Register** of September 14, 2009 (74 FR 46996), FDA announced the availability of the draft guidance document. Interested persons were invited to comment by December 14, 2009. Three sets of comments were received with recommendations related to definitions and certain elements of the recommended study design(s), such as study endpoints, endpoint assessments, appropriate control groups, and followup of study subjects. In response, FDA revised the guidance document to address the comments and clarify our recommendations as appropriate. This guidance supersedes the draft guidance entitled ''Clinical Study Designs for Surgical Ablation Devices for Treatment of Atrial Fibrillation,'' dated September 14, 2009.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on clinical study designs for surgical ablation devices for treatment of atrial fibrillation. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* To receive ''Clinical Study Designs for Surgical Ablation Devices for Treatment of Atrial Fibrillation,'' you may either send an email request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1708 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR parts 50 and 56 have been approved under OMB control number 0910–0130; and the collections of information under 21 CFR part 814 have been approved under OMB control number 0910–0231.

V. Comments

Interested persons may submit either written comments regarding this document to the Division of Dockets Management (see **ADDRESSES**) or electronic comments to *http://www.regulations.gov.* It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: February 11, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–03487 Filed 2–14–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0001]

Transmissible Spongiform Encephalopathies Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Transmissible Spongiform Encephalopathies Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 14, 2013, from 8 a.m. to 4 p.m.

Location: 5630 Fishers Lane, FDA Conference Room 1066, Rockville, MD 20857. For those unable to attend in person, the meeting will also be Webcast. The Web cast will be available at the following link *http://fda.yorkcast.com/webcast/Viewer/?peid=63bc1bd2838040b48eb7db7cbedfc4191d.*

Contact Person: Bryan Emery or Rosanna Harvey, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–1277 or 301–827–1297, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On March 14, 2013, the Committee will meet in open session to discuss FDA's draft risk assessment model for potential exposure to the variant Creutzfeldt-Jakob disease (vCJD) agent in Red Blood Cells for transfusion in the United States.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before March 7, 2013. On March 14, 2013, oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 27, 2013. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 28, 2013.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets. Seating for this meeting may be limited, so the public is encouraged to watch the free Webcast if you are unable to attend. The link for the Webcast will be available beginning at 8 a.m. on March 14, 2013 (see *Location*).

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Bryan Emery at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 12, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–03577 Filed 2–14–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0001]

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 20, 2013, from 8 a.m. to 6 p.m.

Location: Holiday Inn, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD 20879. The hotel's phone number is 301–948–8900.

Contact Person: Jamie Waterhouse, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On March 20, 2013, the committee will discuss, make recommendations, and vote on information related to the premarket approval application for the MitraClip Delivery System sponsored by Abbott Vascular. The system consists of three major components: The delivery catheter, the steerable sleeve, and the MitraClip device. The MitraClip device is a single sized, percutaneously implanted mechanical clip for the reduction of mitral regurgitation. The MitraClip device grasps and coapts the mitral valve leaflets resulting in fixed approximation of the mitral leaflets throughout the cardiac cycle. The implantable MitraClip device is fabricated with metal alloys and polyester fabric (Clip cover) that are commonly used in cardiovascular implants. The proposed indication for use: The MitraClip Delivery System is indicated for the percutaneous reduction of significant symptomatic mitral regurgitation (MR≥3) in patients who have been determined by a cardiac surgeon to be too high risk for open mitral valve surgery and in whom existing comorbidities would not preclude the expected benefit from correction of the mitral regurgitation.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before March 13, 2013. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on March 20, 2013. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 1, 2013. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 4, 2013.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact James Clark, Conference Management Staff, at *James.Clark@fda.hhs.gov* or 301–796–5293, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 11, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–03488 Filed 2–14–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission of OMB Review; Comment Request (30-Day FRN):

Drug Accountability Report Form and Investigator Registration Procedure in the Conduct of Investigational Trials for the Treatment of Cancer (NCI)

SUMMARY: In compliance with the requirement of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collected below. This proposed information collection was previously published in the **Federal Register** on September 20, 2012 (77 FR 58401) and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after March 1, 2011, unless it displays a valid OMB control number.

Written comments or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response times, should be directed to the Attention: NIH Desk Officer, Office of Management and Budget, at *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Charles L. Hall, Jr., Chief, Pharmaceutical Management Branch, Cancer Therapy Evaluation Program, Division of the Cancer Treatment and Diagnosis, and Centers, National Cancer Institute, Executive Plaza North, Room 7148, 9000 Rockville Pike, Bethesda, MD 20892 or call non-toll-free number 301–496–5725 or Email your request, including your address to: *Hallch@mail.nih.gov.*

Comments regarding this information collection are best assured of having their full effect if received within 30 days following the date of this publication.

Proposed Collection: Drug Accountability Report Form and Investigator Registration Procedure in the Conduct of Investigational Trials for the Treatment of Cancer (NCI), OMB No.0925–0613, Expiration Date: 2/28/2013, Revision, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The U.S. Food and Drug Administration (FDA) holds the National Cancer Institute (NCI) responsible, as a sponsor of investigational drug trials, for the collection of information about the clinical investigators who participate in these trials and to assure the FDA that systems for accountability are being maintained by investigators in its clinical trials program. The information collected is used to identify qualified investigators and to facilitate the submission and distribution of important information relative to the investigational drug and the response of the patient to that drug. Investigators are physicians who specialize in the treatment of patients with cancer. Data obtained from the Drug Accountability Record is used to track the dispensing of investigational anticancer agents from receipt from the NCI to dispensing or administration to patients. NCI and/or its auditors use this information for compliance purposes.

OMB approval is requested for 3 years. There are no costs to the respondents other than their time. The total estimated annualized burden hours are 14,328.

ESTIMATES OF ANNUAL BURDEN

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average time per response (in Hours)	Total annual burden hour
Investigators and Designee for Investigator Registration and DARF.	Statement of Investigator	20,220	1	15/60	5,050
	Supplemental Investigator	20,112	1	10/60	3,352
	Financial Disclosure	20,800	1	5/60	1,733
	Electronic Curriculum Vitae	100	1	15/60	25
	Drug Accountability Record Form (DARF and DARF-Oral).	3,907	16	4/60	4,168
Totals					14,328

Dated: February 11, 2013.

Vivian Horovitch-Kelley,

National Cancer Institute Project Clearance Liaison, National Cancer Institute, National Institutes of Health.

[FR Doc. 2013–03571 Filed 2–14–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of NIH Consensus Development Conference: Diagnosing Gestational Diabetes Mellitus

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) is holding a conference, titled ''Consensus Development Conference: Diagnosing Gestational Diabetes Mellitus.'' The conference will be open to the public.

DATES: The conference will be held on March 4–6, 2013, in the NIH Natcher Conference Center, 45 Center Drive, Bethesda, Maryland 20892.

FOR FURTHER INFORMATION CONTACT: Advance information about the conference and conference registration materials may be obtained from the NIH Consensus Development Program Information Center by calling 888–644–2667 or by sending an email to *Prevention@mail.nih.gov*. The Information Center's mailing address is P.O. Box 2577, Kensington, Maryland 20891. Registration and conference information are also available on the NIH Consensus Development Program Web site at *http://prevention.nih.gov/cdp/*.

SUPPLEMENTARY INFORMATION: Gestational diabetes mellitus (GDM) is a condition in which women without previously diagnosed diabetes exhibit high blood glucose levels during pregnancy (especially during the third trimester of pregnancy). It is defined as carbohydrate intolerance, which is the inability of the body to adequately process carbohydrates (sugars and starches) into energy for the body, and develops or is first recognized during pregnancy. GDM is estimated to occur in 1–14 percent of U.S. pregnancies, affecting more than 200,000 women annually. It is one of the most common disorders in pregnancy and is associated with an increased risk of complications for the mother and child. Potential complications during pregnancy and delivery include preeclampsia (high blood pressure and excess protein in the urine), cesarean delivery, macrosomia (large birth weight), shoulder dystocia (when a baby's shoulders become lodged during delivery), and birth injuries. For the neonate, complications include difficulty breathing at birth, hypoglycemia (low blood sugar), and jaundice. Up to one-half of the women who have GDM during pregnancy will develop type 2 diabetes later in life.

Although the U.S. Preventive Services Task Force found in 2008 that the evidence was insufficient to assess the balance between the benefits and harms of screening women for GDM, the American College of Obstetricians and Gynecologists recommends universal screening for gestational diabetes using patient history, risk factors, or laboratory testing, such as with a glucose challenge test (GCT). Different approaches are used internationally for screening and diagnosis of GDM. The standard method in the United States begins with a GCT, which involves drinking a sweetened liquid containing 50 grams of sugar (glucose). A blood sample is taken after 1 hour, which measures the glucose level. If high, a diagnostic test is administered using a larger dose of glucose, and several blood tests are performed over 3 hours. Depending on the test used and the chosen blood glucose levels that are used to diagnose GDM, the number of women who will receive the diagnosis will vary. Debate continues regarding the choice of tests and the effectiveness of treatment, especially in women with mild to moderate glucose intolerance. Potential harms of screening for GDM include anxiety for patients and the potentially adverse effects of a ''high-risk'' label in pregnancy. In addition, women diagnosed with GDM face stressors, including dietary constraints; a need to add or increase exercise; frequent self-monitoring of blood glucose levels; and, for some, self-administration of insulin, which will require adjustments of insulin doses.

To better understand the benefits and risks of various GDM screening and diagnostic approaches, the NIH has engaged in a rigorous assessment of the available scientific evidence. This process is sponsored by the Eunice Kennedy Shriver National Institute of Child Health and Human Development and the NIH Office of Disease Prevention. A multidisciplinary planning committee developed the following key questions:

1. What are the current screening and diagnostic approaches for gestational diabetes mellitus, what are the glycemic thresholds for each approach, and how were these thresholds chosen?

2. What are the effects of various gestational diabetes mellitus screening/diagnostic approaches for patients, providers, and U.S. health care systems?

3. In the absence of treatment, how do health outcomes of mothers who meet various criteria for gestational diabetes mellitus and their offspring compare with those who do not?

4. Does treatment modify the health outcomes of mothers who meet various criteria for gestational diabetes mellitus and their offspring?

5. What are the harms of treating gestational diabetes mellitus, and do they vary by diagnostic approach?

6. Given all of the above, what diagnostic approach(es) for gestational diabetes mellitus should be recommended, if any?

7. What are the key research gaps in the diagnostic approach for gestational diabetes mellitus?

An evidence report on GDM was prepared through the Agency for Healthcare Research and Quality's Evidence-based Practice Centers program and this Consensus Development Conference will be held on March 4–6, 2013.

During the conference, invited experts, including the authors of the evidence report, will present scientific data. Attendees will have opportunities to ask questions and provide comments during open discussion periods. After weighing the evidence, an unbiased, independent panel will prepare and present a consensus statement addressing the key questions. The statement will be widely disseminated to practitioners, policymakers, patients, researchers, the general public, and the media.

Please Note: As part of the NIH's measures to ensure the safety of employees and property, all visitors must be prepared to show a photo ID upon request. Visitors may be required to pass through a metal detector and have bags, backpacks, or purses inspected or x-rayed as they enter NIH buildings. For more information about the security measures at NIH, please visit the Web site at *http://www.nih.gov/about/visitorsecurity.htm*.

Dated: February 8, 2013.

Francis S. Collins,

Director, National Institutes of Health.

[FR Doc. 2013–03574 Filed 2–14–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Program Project on Intestinal Transport.

Date: April 5, 2013.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maria E. Davila-Bloom, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 11, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–03525 Filed 2–14–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Research Service Awards for Individual Predoctoral Fellows.

Date: March 7, 2013.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Michael Micklin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Genomics, Molecular Evolution and Biochemical Genetics.

Date: March 7, 2013.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: David J. Remondini, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2210, MSC 7890, Bethesda, MD 20892, 301–435–1038, *remondid@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business Grant Applications: Immunology.

Date: March 8, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.

Contact Person: Stephen M. Nigida, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, 301–435–1222, *nigidas@csr.nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group; HIV/AIDS Vaccines Study Section.

Date: March 8, 2013

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 033 M Street NW., Washington, DC 20036.

Contact Person: Mary Clare Walker, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Biological Chemistry, Biophysics and Drug Discovery.

Date: March 8, 2013.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street, NW, Washington, DC 20037.

Contact Person: Vonda K Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6188, MSC 7892, Bethesda, MD 20892, 301–435–1789, *smithvo@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cardiovascular and Surgical Devices

Date: March 8, 2013.

Time: 10:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Jan Li, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Inatitutes of Health, 6701 Rockledge Drive, Room 5106, Bethesda, MD 20892, 301.435.1049, *lij21@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Advancing Community-Level Approaches To Reduce HIV Infection In Highly Impacted Communites.

Date: March 8, 2013.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Mark P. Rubert, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–RM–12–011: Reference Profiles of Human Extracellular RNA (U01).

Date: March 8, 2013

Time: 1:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Barbara J Thomas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2218, MSC 7890, Bethesda, MD 20892, 301–435–0603, *bthomas@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 11, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–03524 Filed 2–14–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Data Analysis.

Date: April 4, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: DoubleTree by Hilton Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alicja Markowska, Ph.D., D.Sc., Scientific Review Branch, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666 *markowsa@nia.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 11, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–03522 Filed 2–14–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Collaborative Interdisciplinary Team Science (R24).

Date: March 28, 2013.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert Wellner, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 706, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–4721, *rw175w@nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; R01 Clinical Ancillary Studies.

Date: March 29, 2013.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert Wellner, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 706, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–4721, *rw175w@nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Ancillary Studies to CRIC, CKiD, MESA.

Date: April 5, 2013.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Barbara A. Woynarowska, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 754, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 402–7172, *woynarowskab@niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: February 11, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–03523 Filed 2–14–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS Discovery and Development of Therapeutics Study Section.

Date: March 11, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street NW., Washington, DC 20036.

Contact Person: Shiv A. Prasad, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; AIDS Molecular and Cellular Biology Study Section.

Date: March 11, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Kenneth A. Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; Behavioral and Social Science Approaches to Preventing HIV/AIDS Study Section.

Date: March 11–12, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.

Contact Person: Jose H. Guerrier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Drugs and Channels.

Date: March 11, 2013.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Geoffrey G. Schofield, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Biology.

Date: March 11, 2013.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Charles Morrow, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892, 301–451–4467, *morrowcs@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; NIH Roadmap—Extracellular RNA Resource applications (U54).

Date: March 11, 2013.

Time: 2:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Barbara J. Thomas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2218, MSC 7890, Bethesda, MD 20892, 301–435–0603, *bthomas@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 11, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–03526 Filed 2–14–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2011–0138]

Merchant Mariner Medical Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The Merchant Mariner Medical Advisory Committee (MEDMAC) will meet on March 14–15, 2013 to discuss matters relating to medical certification determinations for issuance of merchant mariner credentials, medical standards and guidelines for physical qualifications of operators of commercial vessels, medical examiner education, and medical research. The meeting will be open to the public.

DATES: MEDMAC will meet on Thursday, March 14, and Friday, March 15, 2013, from 8:00 a.m. to 5:30 p.m. Please note that the meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held at the Houston Pilots facility, 203 Deerwood Glen Drive, Deer Park, TX 77536.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Lieutenant Ashley Holm, the MEDMAC Alternate Designated Federal Officer (ADFO), 202–372–1128 as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the ''Agenda'' section below. Comments must be submitted in writing to the Coast Guard on or before March 4, 2013 and must be identified by USCG–2011–0138 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments (preferred method to avoid delays in processing).
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. The telephone number is 202–366–9329.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316). If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please provide an electronic copy to the ADFO, no later than March 4, 2013. Your materials will be placed on the MEDMAC Web site *https://homeport.uscg.mil* to be made available to the members of the committee and the public.

Docket: For access to the docket to read background documents or comments related to this notice, go to *http://www.regulations.gov* and enter ''USCG–2011–0138'' in the ''SEARCH'' box.

A public comment period will be held on March 14, 2013, from approximately 9:15 a.m. to 9:45 a.m., and on March 15, 2013 from approximately 4:40 p.m. to 5:00 p.m. Speakers are requested to limit their comments to 5 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Additionally, public comment will be sought throughout the meeting as specific tasks and issues are discussed by the committee. Contact the individual listed below to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Lieutenant Ashley Holm, the MEDMAC ADFO, at telephone 202–372–1128 or email *Ashley.e.holm@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act,* 5 U.S.C. App. (Pub. L. 92–463). The MEDMAC is authorized by 46 U.S.C. 7115 as amended by section 210 of the *Coast Guard Authorization Act of 2010* (Pub. L. 111–281) and advises the Secretary on matters related to (a) Medical certification determinations for issuance of licenses, certificates of registry, and merchant mariners' documents; (b) medical standards and guidelines for the physical qualifications of operators of commercial vessels; (c) medical examiner education; and (d) medical research.

Agenda

Day 1, March 14

(1) Remarks from Presiding Officer of the Houston Pilots, Captain Robert Thompson.

(2) Opening comments by Designated Federal Officer (DFO), Captain K.P. McAvoy.

(3) Remarks from the Director of Inspections and Compliance, Captain P.F. Thomas.

(4) Introduction and swearing in of the new member, Chair and Vice-Chair designations.

(5) Review of Last Full Committee Meeting's Minutes.

(6) Public Comments.

(7) Working Groups reports out.

(8) Working Groups addressing the following task statements may meet to deliberate—

(a) Task Statement 1, Revision of Navigation and Vessel Inspection Circular (NVIC) 04–08. The NVIC can be found at *http://www.uscg.mil/hq/cg5/nvic/* Medical and Physical Guidelines for Merchant Mariner Credentials.

(b) Task Statement 2, Top medical conditions leading to denial of mariner credentials.

(c) Task Statement 4, Revising the CG–719K Medical Evaluation Report Form for mariner physicals. The form can be found at *http://www.uscg.mil/nmc.*

(d) Task Statement 5, Creating medical expert panels for the top medical conditions.

(e) Task Statement 6, Developing designated medical examiner program.

Day 2, March 15

(1) Presentation by the Heart Rhythm Society (Task 1 & 2).

(2) Continue work on Task Statements.

(3) By mid-afternoon, the Working Groups will report, and if applicable, make recommendations for the full committee to consider for presentation to the Coast Guard. The committee may take official action on these recommendations on this date. The public will have an opportunity to speak after each Working Group's Report before the full committee takes any action on each report.

(4) Public Comments.

(5) Closing remarks/plans for next meeting.

Dated: February 8, 2013.

P.F. Thomas,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2013–03548 Filed 2–14–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2013–0073]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The Merchant Marine Personnel Advisory Committee (MERPAC) will meet on March 12, 2013 and March 13, 2013 in Houston, TX, to discuss various issues related to the training and fitness of merchant marine personnel. This meeting will be open to the public.

DATES: MERPAC working groups will meet on March 12, 2013, from 8 a.m. until 4 p.m., and the full committee will meet on March 13, 2013, from 8 a.m. until 4 p.m. This meeting may adjourn early if all business is finished.

ADDRESSES: The Committee will meet in the Red Room of the West Gulf Maritime Association (WGMA), 1717 Turning Basin, Suite 200 Houston, Texas 77029. For further information on the location of WGMA, please contact Mr. Niels Lyngso at (713) 715–6443.

For information on facilities or services for individuals with disabilities or to request special assistance, contact Mr. Davis Breyer at 202–372–1445 as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee and working groups as listed in the ''Agenda'' section below. Written comments for distribution to committee members and inclusion on MERPAC's Web site must be submitted by February 26, 2013.

Written comments must be identified by Docket No. USCG–2013–0073 and submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments (preferred method to avoid delays in processing).
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. The telephone number is 202–366–9329.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Docket: For access to the docket to read documents or comments related to this notice, go to *http://www.regulations.gov.*

A public oral comment period will be held each day. Speakers are requested to limit their comments to 3 minutes. Please note that the public oral comment period may end before the prescribed ending time indicated following the last call for comments. Contact Davis Breyer at *davis.j.breyer@uscg.mil* or at at 202–372–1445 no later than February 26, 2013, to register as a speaker. This notice may be viewed in our online docket, USCG–2013–0073, at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Davis Breyer, Alternate Designated Federal Officer (ADFO), telephone 202–372–1445, or at *davis.j.breyer@uscg.mil.*

If you have any questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act,* 5 U.S.C. App. (Pub. L. 92–463).

MERPAC is an advisory committee established under the Secretary's authority in section 871 of the Homeland Security Act of 2002, Title 6, United States Code, section 451, and chartered under the provisions of the FACA. The Committee acts solely in an advisory capacity to the Secretary of the Department of Homeland Security (DHS) through the Commandant of the Coast Guard and the Director of Commercial Regulations and Standards on matters relating to personnel in the U.S. merchant marine, including but not limited to training, qualifications, certification, documentation, and fitness standards. The Committee will advise, consult with, and make recommendations reflecting its independent judgment to the Secretary.

Agenda of Meeting

Day 1

The agenda for the March 12, 2013, meeting is as follows:

(1) The full committee will meet briefly to discuss the working groups' business/task statements, which are listed under paragraph 2 (a)–(g) below.

(2) Working groups addressing the following task statements, available for viewing at *http://homeport.uscg.mil/merpac* will meet to deliberate:

(a) Task Statement 30, Utilizing Military Education, Training and Assessment for STCW (the International Convention on Standards of Training, Certification & Watchkeeping for Seafarers (STCW) (1978), as amended) and U.S. Coast Guard Certifications;

(b) Task Statement 58, Stakeholder Communications during Merchant Mariner Licensing and Documentation Program (MLD) Restructuring and Centralization;

(c) Task Statement 71, Review of USCG Operational Level Examination (3rd Mate/2nd Mate and 3rd/2nd Assistant Engineer) Topics and Questions and Alignment with the STCW Code;

(d) Task Statement 73, Development of Training Guidance for Engineers Serving on Near-Coastal Vessels;

(e) Task Statement 77, Development of Performance Measures (Assessment Criteria);

(f) Task Statement 78, Consideration of the International Labor Organization's Maritime Labour Convention, 2006; and

(g) Task Statement 80, Crew Training Requirements Onboard Natural Gas-Fueled Vessels Other Than Liquefied Natural Gas Carriers.

(3) Public comment period.

(4) Reports of working groups. At the end of the day, the working groups will report to the full committee on what was accomplished in their meetings. The full committee will not take action on these reports on this date. Any official action taken as a result of this working group meeting will be taken on day 2 of the meeting.

(5) Adjournment of meeting.

Day 2

The agenda for the March 13, 2013, Committee meeting is as follows:

(1) Introduction;

(2) Remarks from Coast Guard Leadership;

(3) Roll call of committee members and determination of a quorum;

(4) Designated Federal Officer (DFO) announcements;

(5) Reports from the following working groups;

(a) Task Statement 30, Utilizing Military Education, Training and Assessment for STCW and U.S. Coast Guard Certifications;

(b) Task Statement 58, Stakeholder Communications during MLD Program Restructuring and Centralization;

(c) Task Statement 71, Review of USCG Operational Level Examination (3rd Mate/2nd Mate and 3rd/2nd Assistant Engineer) Topics and Questions and Alignment with the STCW Code;

(d) Task Statement 73, Development of Training Guidance for Engineers Serving on Near-Coastal Vessels;

(e) Task Statement 77, Development of Performance Measures (Assessment Criteria);

(f) Task Statement 78, Consideration of the International Labor Organization's Maritime Labour Convention, 2006; and

(g) Task Statement 80, Crew Training Requirements Onboard Natural Gas-Fueled Vessels Other Than Liquefied Natural Gas Carriers.

(6) Other items for discussion:

(a) Report on National Maritime Center (NMC) activities from NMC Commanding Officer, such as the net processing time it takes for a mariner to receive his or her credential after application submittal;

(b) Report on Mariner Credentialing Program Policy Division activities, such as its current initiatives and projects;

(c) Report on International Maritime Organization (IMO)/International Labor Organization (ILO) issues related to the merchant marine industry;

(d) Report on the implementation of the 2010 amendments to the STCW Convention; and

(e) Briefings about on-going Coast Guard projects related to personnel in the U.S. Merchant Marine, such as proposed Task Statements concerning:

- Training for officers and crewmembers aboard ships operating in polar waters;
- Review of CG–719K (Merchant Mariner Physical Examination Report) & CG–719K/E (Merchant Marine Certification of Fitness for Entry Level Ratings); and
- Development of competency requirements for engineers working on small vessels with high horsepower.

(7) Public comment period/presentations.

(8) Discussion of working group recommendations. The committee will review the information presented on each issue, deliberate on any recommendations presented by the working groups and approve/formulate recommendations for the Department's consideration. Official action on these recommendations may be taken on this date.

(9) Closing remarks/plans for next meeting.

(10) Adjournment of meeting.

Procedural

A copy of all meeting documentation, including the Task Statements, is available at *https://homeport.uscg.mil* by using these key strokes: Missions; Port and Waterways Safety; Advisory Committees; MERPAC; and then use the event key. Alternatively, you may contact Mr. Breyer as noted above.

Minutes will be available 90 days after this meeting.

Dated: February 11, 2013.

J.G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2013–03549 Filed 2–14–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2009–0024]

Enforcement Actions Summary

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice of availability.

SUMMARY: The Transportation Security Administration (TSA) is providing notice that it has issued an annual summary of all enforcement actions taken by TSA under the authority granted in the Implementing Recommendations of the 9/11 Commission Act of 2007.

FOR FURTHER INFORMATION CONTACT: Emily Su, Assistant Chief Counsel, Civil Enforcement, Office of the Chief Counsel, TSA–2, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6002; telephone (571) 227–2305; facsimile (571) 227–1378; email *emily.su@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 2007, section 1302(a) of the Implementing Recommendations of the 9/11 Commission Act of 2007 (the 9/11 Act), Public Law 110–53, 121 Stat. 392, gave TSA new authority to assess civil penalties for violations of any surface transportation requirements under title 49 of the U.S. Code (U.S.C.) and for any violations of chapter 701 of title 46 of the U.S. Code, which governs transportation worker identification credentials.

Section 1302(a) of the 9/11 Act, codified at 49 U.S.C. 114(v), authorizes the Secretary of the Department of Homeland Security (DHS) to impose civil penalties of up to $10,000 per violation of any surface transportation requirement under 49 U.S.C. or any requirement related to transportation worker identification credentials (TWIC) under 46 U.S.C. chapter 701. TSA exercises this function under delegated authority from the Secretary. See DHS Delegation No. 7060–2.

Under 49 U.S.C. 114(v)(7)(A), TSA is required to provide the public with an annual summary of all enforcement actions taken by TSA under this subsection; and include in each such summary the identifying information of each enforcement action, the type of alleged violation, the penalty or penalties proposed, and the final assessment amount of each penalty. This summary is for calendar year 2012. TSA will publish a summary of all enforcement actions taken under the statute in January to cover the previous calendar year.

Document Availability

You can get an electronic copy of both this notice and the enforcement actions summary on the Internet by searching the electronic Federal Docket Management System (FDMS) web page at *http://www.regulations.gov*, Docket No. TSA–2009–0024;

You can get an electronic copy of only this notice on the Internet by—

(1) Accessing the Government Printing Office's web page at *http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR* to view the daily published **Federal Register** edition; or accessing the ''Search the **Federal Register** by Citation'' in the ''Related Resources'' column on the left, if you need to do a Simple or Advanced search for information, such as a type of document that crosses multiple agencies or dates; or

(2) Visiting TSA's Security Regulations web page at http://www.tsa.gov and accessing the link for ''Stakeholders'' at the top of the page, then the link ''Research Center'' in the left column.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Issued in Arlington, Virginia, February 11, 2013.

Margot F. Bester,

Principal Deputy Chief Counsel.

[FR Doc. 2013–03587 Filed 2–14–13; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension, Without Change, of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection; File No. I–352, Immigration Bond; OMB Control No. 1653–0022.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), will submit the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until April 16, 2013.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), Scott Elmore, Forms Managment, U.S. Immigration and Customs Enforcement, 801 I Street NW., Stop 5800, Washington, DC 20536; (202) 732–2601.

Comments are encouraged and will be accepted for sixty days until April 16, 2013. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, without change, of an existing information collection.

(2) *Title of the Form/Collection:* Immigration Bond.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* I–352, U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individual or Households; Business or other for-profit. The data collected on this collection instrument is used by ICE to ensure that the person or company posting the bond is aware of the duties and responsibilities associated with the bond. The collection instrument serves the purpose of instruction in the

completion of the form, together with an explanation of the terms and conditions of the bond. Sureties have the capability of accessing, completing and submitting a bond electronically through ICE's eBonds system which emcompasses the I–352, while individuals are required to complete the bond form manually.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 25,000 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 12,500 annual burden hours Comments and/or questions; requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Scott Elmore, Forms Management, U.S. Immigration and Customs Enforcement, 801 I Street NW., Stop 5800, Washington, DC 20536; (202) 732–2601.

Dated: February 8, 2013.

Scott Elmore,

Forms Managementt, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2013–03591 Filed 2–14–13; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2013–N036; FXES11130600000D2–123–FF06E00000]

Endangered and Threatened Wildlife and Plants; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following application to conduct certain activities with endangered or threatened species. With some exceptions, the Endangered Species Act of 1973, as amended (Act), prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act requires that we invite public comment before issuing these permits.

DATES: To ensure consideration, please send your written comments by March 18, 2013.

ADDRESSES: You may submit comments or requests for copies or more information by any of the following methods. Alternatively, you may use one of the following methods to request hard copies or a CD–ROM of the documents. Please specify the permit you are interested in by number (e.g., Permit No. TE–131638).

- *Email:* permitsR6ES@fws.gov. Please refer to the respective permit number (e.g., Permit No. TE–131638) in the subject line of the message.
- *U.S. Mail:* Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486–DFC, Denver, CO 80225
- *In-Person Drop-off, Viewing, or Pickup:* Call (303) 236–4212 to make an appointment during regular business hours at 134 Union Blvd., Suite 645, Lakewood, CO 80228.

FOR FURTHER INFORMATION CONTACT: Kathy Konishi, Permit Coordinator Ecological Services, (303) 236–4212 (phone); *permitsR6ES@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17, the Act provides for permits, and requires that we invite public comment before issuing these permits.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes you to conduct activities with United States endangered or threatened species for scientific purposes, enhancement of propagation or survival, or interstate commerce (the latter only in the event that it facilitates scientific purposes or enhancement of propagation or survival). Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Application Available for Review and Comment

We invite local, State, and Federal agencies, and the public to comment on the following application. Documents and other information the applicant has submitted are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit Application Number: TE–131638

Applicant: Living Planet Aquarium, 12033 South Lone Peak Parkway, Draper, UT 84020

Applicant requests an amendment to an existing permit to receive (display live) hawksbill sea turtle *(Eretmochelys imbricata),* Kemp's Ridley sea turtle *(Lepidochelys kempii),* and loggerhead sea turtle *(Caretta caretta)* to be acquired from U.S. turtle rehabilitation centers based on availability for the purpose of enhancing the species' survival. The applicant requests an amendment to the existing permit, to change the physical location of the facility from 725 E. 10600 S., Sandy, UT 84094 to 12033 South Lone Peak Parkway, Draper, UT 84020.

National Environmental Policy Act

In compliance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority:

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*)

Dated: February 7, 2013.

Michael G. Thabault,

Assistant Regional Director, Mountain-Prairie Region.

[FR Doc. 2013–03423 Filed 2–14–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2012–N294; FXES11120200000F2–134–FF02ENEH00]

Final Environmental Impact Statement and Record of Decision on the Edwards Aquifer Recovery Implementation Program Habitat Conservation Plan for Incidental Take of 11 Species (8 Federally Listed) in 8 Texas Counties

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, under the National Environmental Policy Act of 1969, make available the final environmental impact statement (EIS) and record of decision analyzing the impacts of the issuance of an incidental take permit for implementation of the final Edwards Aquifer Recovery Implementation Program (EARIP) Habitat Conservation Plan (HCP). Our decision is to issue a 15-year incidental take permit to the EARIP for implementation of the preferred alternative (described below), which authorizes incidental take of animal species and impacts to plant species listed under the Endangered Species Act of 1973, as amended. The EARIP has agreed to implement avoidance, minimization, and mitigation measures to offset impacts to these species, as described in their HCP.

DATES: We are issuing the Record of Decision (ROD) with this notice, and a final permit will not become effective sooner than 30 days after publication of this notice. We must receive any comments on the final EIS and HCP by March 18, 2013.

ADDRESSES: You may obtain copies of the final documents by going to *http://www.fws.gov/southwest/es/AustinTexas/.* Alternatively, you may obtain a compact disk with electronic copies of these documents by writing to Mr. Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758; by calling (512) 490–0057; or by faxing (512) 490–0974. Written comments may be submitted to Mr. Adam Zerrenner (see address above). For additional information about where to review documents, see ''Reviewing Documents'' under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mr. Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758 or (512) 490–0057.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the final environmental impact statement (EIS) and record of decision (ROD), which we developed in compliance with the agency decision-making requirements of the National Environmental Policy Act of 1969, as amended (NEPA), as well as the final Edwards Aquifer Recovery Implementation Program (EARIP) Habitat Conservation Plan (HCP) as submitted by the applicants. All alternatives have been described in detail, evaluated, and analyzed in our December 2012 final EIS and the EARIP HCP. The ROD documents the rationale for our decision.

Based on our review of the alternatives and their environmental consequences as described in our final EIS, we have selected Alternative 2, the proposed HCP. The proposed action is to issue to the EARIP applicants an incidental take permit (ITP) under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), that authorizes incidental take of animal species and impacts to plant species. The term of the permit is 15 years (2013–2028), and would include the following endangered, threatened, and non-listed species (also referred to as ''covered species''):

Endangered

Texas wild rice (*Zizania texana*)
Comal Springs riffle beetle (*Heterelmis comalensis*)
Comal Springs dryopid beetle (*Stygoparnus comalensis*)
Peck's Cave amphipod (*Stygobromus pecki*)
Fountain darter (*Etheostoma fonticola*)
Texas blind salamander (*Eurycea [=Typhlomolge] rathbuni*)
San Marcos gambusia (*Gambusia georgei*)

Threatened

San Marcos salamander (*Eurycea nana*)

Non-listed Species

Texas cave diving beetle (*Haideoporus texanus*)
Texas troglobitic water slater (*Lirceolus smithii*)
Comal Springs salamander (*Eurycea* sp.)

Take of listed plant species is not defined in the Act, although the Act does identify several prohibitions. However, because covered species in the EARIP HCP include both plants and animals, in the following discussion we use the term ''incidental take'' when discussing impacts to covered plants, as well as actual incidental take of covered animals.

The EARIP will implement avoidance, minimization, and mitigation measures to offset impacts to the covered species according to their HCP. The minimization and mitigation measures include spring flow and habitat protection. Spring flow protection measures will ensure that no interruption of flow at springs will occur during wet, normal, or drought conditions. Habitat protection measures will restore and enhance aquatic and riparian habitat in the Comal and San Marcos River systems.

Background

The EARIP has applied for an incidental take permit (TE63663A–0, ITP) under the Endangered Species Act of 1973, as amended (Act), that would authorize incidental take of animal species and impacts to plant species (covered species) in all, or portions, of eight Texas counties. The requested ITP, which will be in effect for a period of 15 years, will authorize incidental take of seven federally listed animal species and impacts to one listed plant species, and would cover three non-listed species. The proposed incidental take could occur within Bexar, Medina, and Uvalde Counties, and portions of Atascosa, Caldwell, Comal, Guadalupe, and Hays Counties in Texas (permit area), and would result from activities associated with otherwise lawful activities, including the regulation and use of groundwater for irrigation, industrial, municipal, domestic, and livestock purposes; the use of instream flows in the Comal River and San Marcos River for recreational uses; and other operational and maintenance activities that could affect Comal Springs, San Marcos Springs, and their associated river systems (covered activities). The final EIS considers the direct, indirect, and cumulative effects of implementation of the HCP, including the measures that will be implemented to minimize and mitigate such impacts to the maximum extent practicable. Incidental take coverage is also provided for any take of covered species that may occur during species management and habitat restoration and management activities related to the minimization and mitigation proposed within the HCP.

On July 20, 2012, we issued a draft EIS and requested public comment on our evaluation of the potential impacts associated with issuance of an ITP for implementation of the HCP and to evaluate alternatives, along with the draft HCP (77 FR 42756). We included public comments and responses associated with the draft EIS and draft HCP in the final EIS.

Purpose and Need

The purpose of the section 10(a)(1)(B) permit is to authorize incidental take associated with the covered activities described above. We identified key issues and relevant factors through conducting public scoping and public meetings, working with other agencies and groups, and reviewing comments from the public. In response to the publication of the draft EIS and draft HCP, we received responses from 3 Federal agencies, 2 State agencies, and 25 other organizations and individuals. The Environmental Protection Agency had ''no objections'' to the implementation of the preferred alternative. The National Resources Conservation Service agreed with the selection of Alternative 2 as the preferred alternative. The National Park Service stated that they had no comments. The Texas Commission on Environmental Quality supported the selection of the HCP as the preferred alternative. The Texas Parks and Wildlife Department stated that they support the HCP and the DEIS, and provided minor edits and specific clarifying comments intended to improve the documents. Comments from individuals and non-profit organizations provided support for the HCP and the EIS selection of the preferred alternative. Aside from minor edits or suggested clarifications, no substantive comments were received on the draft HCP or the draft EIS.

Alternatives

We considered four alternatives in the EIS.

Alternative 1—No action Alternative: Under the No Action Alternative, the Service would not issue an incidental take permit for the EARIP HCP.

Alternative 2—Preferred Alternative: Our selected alternative is the proposed HCP with a 15-year term, and the preferred alternative as described in the final EIS, which provides for the issuance of an ITP to the EARIP Applicants for incidental take of covered species that may occur as a result of covered activities. This alternative includes a number of measures to maintain or manage springflow, including Critical Period Management (CPM) pumping restrictions, management of an Aquifer Storage and Recharge (ASR) facility to meet water demand that offsets reduced pumping from the Edwards Aquifer near the springs during drought, a Voluntary Irrigation Suspension Program that provides economic incentives to reduce pumping for irrigated agriculture during drought conditions, and a Regional Water Conservation Program. The HCP also provides for habitat restoration and management measures that minimize and mitigate impacts from the potential incidental take to the maximum extent practicable.

Alternative 3—Expanded ASR Program: This alternative would result in the construction of new infrastructure to inject water stored in an expanded ASR into the aquifer to maintain springflow. It includes issuance of an ITP and implementation of an HCP incorporating expanded aquifer storage and recharge actions and CPM pumping restrictions to achieve springflow and covered species protections.

Alternative 4—Highest Pumping Restriction: Alternative 4 would implement the most restrictive pumping regulations to maintain spring flows protective of the covered species.

Decision

We intend to issue an ITP to the EARIP applicants for implementation of the preferred alternative (Alternative 2) as it is described in the HCP. Our decision is based on a thorough review of the alternatives and their environmental consequences. Implementation of this decision entails issuance of the ITP by the Service and full implementation of the HCP by the EARIP, including minimization and mitigation measures, monitoring and adaptive management, and complying with all terms and conditions in the ITP.

Rationale for Decision

We have selected the preferred alternative (Alternative 2) for implementation based on multiple environmental and social factors, including potential impacts and benefits to covered species and their habitats; the extent and effectiveness of avoidance, minimization, and mitigation measures; and social and economic considerations. We did not choose the No Action Alternative, because, as compared with the preferred alternative, it does not protect listed species from potential take from covered activities. We did not choose the Expanded ASR Program (Alternative 3) because of the uncertainties related to the effectiveness of the Expanded ASR Program regarding effects to listed species and the economic impacts to water users throughout the region are greater than those anticipated under Alternative 2. Alternative 4 would curtail pumping more than the preferred alternative, causing the greatest economic impact on water users of any of the alternatives, and was therefore not selected.

In order to issue an ITP we must ascertain that the HCP meets the issuance criteria set forth in 16 U.S.C. 1539(a)(2)(A) and (B). We have made that determination based on the criteria summarized below.

1. *The taking will be incidental.* We find that take will be incidental to otherwise lawful activities, including the applicants' regulation of groundwater, use of surface water for recreational activities, and the operation and maintenance of facilities to withdraw and convey groundwater.

2. *The applicants will, to the maximum extent practicable, minimize and mitigate the impacts of such takings.* The EARIP has developed and is committed to implementing a program that includes a variety of habitat and springflow protection measures. These measures will ensure that water continues to flow from springs to protect species that rely on the flow of water for their survival.

3. *The applicants will develop an HCP and ensure that adequate funding for the HCP will be provided.* The applicants have developed an HCP, which includes a detailed estimate of the costs of implementing the HCP (see Chapter 7 of the HCP). The funding necessary to pay for implementing the HCP will come from water user fees and from other sources, including several municipalities that benefit from HCP implementation, but are not assessed water user fees.

4. *The taking will not appreciably reduce the likelihood of survival and recovery of any listed species in the wild.* As the Federal action agency considering whether to issue an ITP to the EARIP, we have reviewed the proposed action under section 7 of the Act. Our biological opinion, dated January 3, 2013, concluded that issuance of the ITP will not jeopardize the continued existence of the covered species in the wild. No areas designated as critical habitat will be adversely modified. The biological opinion also analyzes other listed species within the planning area and concludes that the direct and indirect effects from implementation of the HCP will not appreciably reduce the likelihood of survival and recovery of other listed species or adversely modify any designated critical habitat within the permit area.

5. *The applicants agree to implement other measures that the Service requires as being necessary or appropriate for the purposes of the HCP.* We have assisted the EARIP in the development of the HCP. We commented on draft documents, participated in numerous meetings, and worked closely with the

EARIP throughout the development of the HCP so conservation of covered species would be assured and recovery would not be precluded by the covered activities. The HCP incorporates our recommendations for minimization and mitigation of impacts, as well as steps to monitor the effects of the HCP and ensure success. Annual monitoring, as well as coordination and reporting mechanisms, have been designed to ensure that changes in the conservation measures can be implemented if proposed measures prove ineffective (adaptive management).

We have determined that the preferred alternative best balances the protection and management of habitat for covered species, while providing compliance with the Act for withdrawal and use of Edwards Aquifer water in the permit area. Considerations used in this decision include whether (1) mitigation will benefit the covered species, (2) adaptive management of the conservation measures will ensure that the goals and objectives of the HCP are realized, (3) conservation measures will protect and enhance habitat, (4) mitigation measures for the covered species will fully offset anticipated impacts to species and provide recovery opportunities, and (5) the HCP is consistent with the covered species' recovery plans.

A final permit decision will be made no sooner than 30 days after the publication of this notice of availability.

Reviewing Documents

You may obtain copies of the final EIS, ROD, and final HCP by going to *http://www.fws.gov/southwest/es/AustinTexas/.* Alternatively, you may obtain a compact disk with electronic copies of these documents by writing to Mr. Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road Suite 200, Austin, TX 78758; by calling (512) 490–0057; or by faxing (512) 490–0974. A limited number of printed copies of the final EIS and final HCP are also available, by request, from Mr. Zerrenner. Copies of the final EIS and final HCP are also available for public inspection and review at the following locations (by appointment only):

- Department of the Interior, Natural Resources Library, 1849 C St. NW., Washington, DC 20240.
- U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 6034, Albuquerque, NM 87102.
- U.S. Fish and Wildlife Service, 10711 Burnet Road Suite 200, Austin, TX 78758.

Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 6034, Albuquerque, NM 87103.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publically available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority: We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 et seq.) and its implementing regulations (50 CFR 17.22 and 17.32), and the National Environmental Policy Act (42 U.S.C. 4321 et seq.) and its implementing regulations (40 CFR part 1506.6).

Joy E. Nicholopoulos,

Acting Regional Director, Southwest Region, Albuquerque, New Mexico.

[FR Doc. 2013–03431 Filed 2–14–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–MB–2013–N006; 91100–3740–GRNT 7C]

Meeting Announcement: North American Wetlands Conservation Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The North American Wetlands Conservation Council (Council) will meet to select North American Wetlands Conservation Act (NAWCA) grant proposals for recommendation to the Migratory Bird Conservation Commission (Commission). This meeting is open to the public, and interested persons may present oral or written statements.

DATES: *Council:* Meeting is March 25, 2013, 1:00 p.m. through 4:30 p.m. If you are interested in presenting information at this public meeting, contact the Council Coordinator no later than March 11, 2013.

ADDRESSES: The Council meeting will be held at the Grand Ballroom E at the Crystal Gateway Marriott, 1700 Jefferson Davis Hwy., Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Cynthia Perry, Council Coordinator, by phone at (703) 358–2432; by email at *dbhc@fws.gov;* or by U.S. mail at U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Mail Stop MBSP 4075, Arlington, VA 22203.

SUPPLEMENTARY INFORMATION:

Background

In accordance with NAWCA (Pub. L. 101–233, 103 Stat. 1968, December 13, 1989, as amended), the State-private-Federal Council meets to consider wetland acquisition, restoration, enhancement, and management projects for recommendation to, and final funding approval by, the Commission. Project proposal due dates, application instructions, and eligibility requirements are available on the NAWCA Web site at *http://www.fws.gov/birdhabitat/Grants/NAWCA/Standard/US/Overview.shtm.*

Proposals require a minimum of 50 percent non-Federal matching funds.

If you are interested in presenting information at this public meeting, contact the Council Coordinator no later than the date under **DATES**.

Meeting

The Council will consider Canadian standard grant and U.S. small grant proposals at the meeting announced in **DATES**. The Commission will consider the Council's recommendations at its meeting tentatively scheduled for June 5, 2013.

Public Input

If you wish to	You must contact the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) no later than
Attend the Council meeting	March 18, 2013.
Submit written information or questions before the Council meeting for consideration during the meeting	March 11, 2013.
Give an oral presentation during the Council meeting	March 11, 2013.

Submitting Written Information or Questions

Interested members of the public may submit relevant information or questions for the Council to consider during the public meeting. If you wish to submit a written statement, so that the information may be made available to the Council for their consideration prior to this meeting, you must contact the Council Coordinator by the date above. Written statements must be supplied to the Council Coordinator in both of the following formats: One hard copy with original signature, and one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, MS PowerPoint, or rich text file).

Giving an Oral Presentation

Individuals or groups requesting to make an oral presentation at the Council meeting will be limited to 2 minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact the Council Coordinator by the date above, in writing (preferably via email; see **FOR FURTHER INFORMATION CONTACT**), to be placed on the public speaker list for either of these meetings. Nonregistered public speakers will not be considered during the Council meeting. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, are invited to submit written statements to the Council within 30 days following the meeting.

Meeting Minutes

Summary minutes of the Council and meeting will be maintained by the Council Coordinator at the address under **FOR FURTHER INFORMATION CONTACT**. Council meeting minutes will be posted at *http://www.fws.gov/birdhabitat/Grants/NAWCA/CouncilAct.shtm#CouncilMeet* within 30 days following the meeting. Personal copies may be purchased for the cost of duplication.

Dated: January 25, 2013.

Jerome Ford,

Assistant Director, Migratory Birds.

[FR Doc. 2013–03166 Filed 2–14–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Class III Gaming Compact.

SUMMARY: This notice publishes an extension of the gaming compact between the Oglala Sioux Tribe and the State of South Dakota.

DATES: Effective Date: February 15, 2013.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act of 1988, 25 U.S.C. 2710(d)(3)(B), the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. This amendment allows for the extension of the current Tribal-State Compact until June 30, 2013.

Dated: January 29, 2013.

Lawrence S. Roberts,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2013–03614 Filed 2–14–13; 8:45 am]

BILLING CODE 4310–4N–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–491–497 (Preliminary)]

Frozen Warmwater Shrimp From China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam

Determination

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam of frozen warmwater shrimp, provided for in subheadings 0306.17.00, 1605.21.10 and 1605.29.10 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Governments of China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam.[2]

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under section 703(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in these investigations under section 705(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On December 28, 2012, a petition was filed with the Commission and Commerce by the Coalition of Gulf Shrimp Industries, Biloxi, MS, alleging that an industry in the United States is materially injured or threatened with

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Daniel R. Pearson voted in the negative.

material injury by reason of subsidized imports of frozen warmwater shrimp from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam. Accordingly, effective December 28, 2012, the Commission instituted countervailing duty investigation Nos. 701–TA–491–497 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 4, 2013 (76 FR 764). The conference was held in Washington, DC, on January 18, 2013, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on February 11, 2013. The views of the Commission are contained in USITC Publication 4380 (February 2013), entitled *Frozen Warmwater Shrimp from China, Ecuador, India, Indonesia, Malaysia, Thailand, and Vietnam: Investigation Nos. 701–TA–491–497 (Preliminary*).

By order of the Commission.

Issued: February 11, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–03491 Filed 2–14–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act and the Comprehensive Environmental Response, Compensation, and Liability Act

On February 11, 2013, the Department of Justice lodged a proposed consent decree with the United States District Court for the Middle District of Florida in the lawsuit entitled *United States, State of Florida Department of Environmental Protection, and Herschel T. Vinyard, Jr.* v. *Mosaic Fertilizer, LLC,* Civil Action No. 8:13–cv–386–T–26TGW.

The consent decree would resolve claims under the Clean Water Act and the Comprehensive Environmental Response, Compensation, and Liability Act, as well as Florida law, addressing natural resource damage resulting from a spill at a facility owned and operated by Mosaic Fertilizer, LLC (''Mosaic''). Mosaic owns and operates a phosphoric acid/fertilizer production facility in Riverview, Florida. Mosaic released hazardous acidic process water at and from the gypsum stack at its Riverview facility in 2004 over a two-day period. The release entered several swales on Mosaic's property, flowing into South Archie Creek Canal, and eventually to Hillsborough Bay and Tampa Bay. Federal and state natural resource trustees seek damages to compensate for and restore injured natural resources.

The consent decree would resolve the natural resource damages claims through restoration and reimbursement of assessment costs. The consent decree would require Mosaic to perform restoration projects enhancing current wetlands by removing invasive plant species, re-establishing historic tidal flows, and creating an oyster habitat, in addition to executing conservation easements for the protection of approximately 103.76 acres of habitat adjacent to Mosaic's release area. In addition to performing restoration projects, Mosaic would pay past and future assessment costs of the trustees and the Hillsborough County Environmental Protection Commission in connection with Mosaic's release.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Mosaic Fertilizer, LLC,* D.J. Ref. No. 90–5–1–1–08961. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $41.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Maureen M. Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–03517 Filed 2–14–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Production of Five Live Satellite/Internet Broadcasts (15 Hours)

AGENCY: National Institute of Corrections, U.S. Department of Justice.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: The National Institute of Corrections (NIC) is soliciting proposals from organizations, groups, or individuals to enter into a cooperative agreement with NIC for up to 12 months beginning March 2013. Through this cooperative agreement, funds will be made available for the production of a minimum of five live satellite/Internet broadcasts. NIC will accept proposals for the creative use of 15 broadcast hours, using either NIC's traditional 3-hour long-form talk show broadcast format or other suggested formats for this work. All of the proposed satellite/Internet programs are 3-hour and/or 2-day, 6-hour (3 hours each day) interactive training broadcasts, featuring on- and off-air activities during nationwide broadcasts. This agreement also includes the production of pre-recorded video clips and screen captures that will enhance the instructional value of the broadcast or otherwise enhance the ''look and feel'' of visual materials, the set, or other items to be used during the broadcast.

DATES: Applications must be received by 4:00 p.m. (EDT) on Friday, March 8, 2013.

ADDRESSES: Mailed applications must be sent to: Director, National Institute of Corrections, 320 First Street NW., Room 5002, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date.

Hand-delivered applications should be brought to 500 First Street NW., Washington, DC 20534. At the front desk, dial 7–3106, extension 0, for pickup. Faxed applications will not be accepted. Only electronic applications submitted via *www.grants.gov* will be accepted.

FOR FURTHER INFORMATION CONTACT: A copy of this announcement can be downloaded from the NIC Web site at *www.nicic.gov.* All technical and/or programmatic questions concerning this announcement should be directed to Leslie LeMaster, Correctional Program Specialist, Academy Division, National Institute of Corrections. She may be reached by calling 800–995–6429, ext 6620, or by email at *llemaster@bop.gov.*

SUPPLEMENTARY INFORMATION:

Background: Satellite/Internet broadcasting is training/education between trainers/facilitators at one location and participants/students as they receive instruction at other locations via technology. NIC uses satellite broadcasting and the Internet economically to reach a larger and broader audience from federal, state, tribal, and local criminal justice agencies, as well as new partners and vested stakeholders who have a common interest in and/or contact with offender populations. Many of these audiences were previously hard to reach using traditional modes of training. In recent years, the vast majority of NIC's audience for broadcasts is accessing this service via streaming Internet connections. Depending upon broadcast subject matter, agencies may convene audiences in larger groups at downlink and/or connection sites.

Additionally, NIC, as a leader in correctional learning, continually seeks to use and integrate various forms of visual technology to support and enhance learning within its full continuum of training delivery strategies.

Purpose: The purpose of funding this initiative is to produce a minimum of five live satellite/Internet broadcasts. NIC will accept proposals for the creative use of 15 broadcast hours, using either NIC's traditional 3-hour long-form talk show broadcast format or other suggested formats for this work. All of the proposed satellite/Internet programs are 3-hour and/or 2-day, 6-hour (3 hours each day) interactive training broadcasts, featuring on- and off-air activities during nationwide broadcasts with the ultimate outcome of disseminating information and/or providing training on current and emergent information to the criminal justice community. Additionally, as part of this award, the agreement includes the production of pre-recorded video clips and screen captures that will enhance the instructional value of each broadcast or otherwise enhance the ''look and feel'' of visual materials, the set, or other items to be used during the broadcast. Examples of these items may include but are not limited to: The production of 12 to 15 short video vignettes (less than 3 minutes each) to support the content of the satellite/Internet broadcasts or to be used by NIC to enhance other training projects; up to 20 short 10- to 15-second video bumps designed around the theme of the broadcast to assist in transitions between content elements of the broadcast; custom designed visuals and props used during a specific broadcast to enhance the set design or otherwise support the content of the broadcast, and editing of video clips shot at the studio at the National Corrections Academy (typically one-on-one interview testimonials) for inclusion in broadcasts.

Scope of Work: To address the scope of work for this project, the following will be needed:

Producer Consultation and Creative Services: The producer for this project plays a key role in managing the project, but he/she must also possess a wide range of technical experience, including script writing, in the development and delivery of video broadcasts. The producer will (1) consult and collaborate with NIC's distance learning administrator (DLA) on program design, program coordination, design and field segments, and content development and (2) participate in/coordinate all planning meetings and planning activities that support each broadcast. A minimum of one face-to-face planning session will be held for each broadcast. Planning sessions typically last 2.5 days and are convened in the NIC Aurora office or at the Washington, DC, headquarters. Planning sessions for 2-day training broadcasts are 3.5 days in duration.

The producer must plan all other activities through telephone and various virtual online platforms (e.g., WebEx, which NIC provides) and consult and collaborate with NIC's DLA in the selection of talent for each broadcast. This will entail review of print and audiovisual materials, as well as phone conversations with potential talent. Face-to-face interviews typically will not be required.

The producer must work with each consultant/trainer to develop his/her content for delivery using the satellite/Internet format. This will entail regular email and telephone communication as well as regularly scheduled updates with key stakeholders on the broadcast team.

The producer will coordinate script and rundown development, graphic design, production elements, and rehearsals for each broadcast and use his/her professional expertise in designing creative ways to deliver satellite/Internet broadcasts.

The producer will develop detailed storyboards for each broadcast. Significant contribution to the development of the storyboard will come from designated content experts, the talent selected to appear in the broadcast, and NIC's DLA. NIC's DLA maintains final approval of all storyboards, video, and other materials produced or used in any broadcast. Please refer to ''Content Development Countdown'' attached to this announcement and also found on NIC's Web site at *http://static.nicic.gov/UserShared/2013-02-11_content_dev_countdown_2012_-_for_coop_agree_sol_final_(1).pdf.*

The producer will supervise camera and audio crews assigned to capture testimonial footage from leaders in the criminal justice field, who answer questions and provide general comment on an array of correctional topics. There will be two or more of these sessions during this agreement. Each shoot will entail 1- to 2-day video shoots at national correctional conferences where appropriate talent/audiences will be convening. The producer will work in concert with the NIC DLA and the NIC broadcast program coordinator(s) in creating testimonial questions for each upcoming broadcast topic to be capture at scheduled conferences/events.

Content Development Process: Having both quality content development and innovative as well as engaging content delivery, are critical components of successful live broadcasts and interactive distance training via satellite/Internet. Therefore, the content development process, as part of the storyboard/rundown development for each broadcast, must be carefully developed. The following process outlines the necessary steps the producer must take to ensure that the content of each broadcast is informative, innovative, and engaging. While each broadcast must be treated as a unique product, it is expected that the following processes will be followed. If adjustments or modifications need to be made to the process to meet the unique needs or circumstances of any of the broadcasts, approval of the DLA is required. Please refer to ''Content Development Countdown'' attached to this announcement and also found on NIC's Web site at *http://static.nicic.gov/UserShared/2013-02-11_content_dev_countdown_2012_-_for_coop_agree_sol_final_(1).pdf.*

Step One: Convene a 2.5-day planning meeting (or longer depending upon broadcast type) with the NIC DLA, an NIC representative/program manager(s) with content knowledge of the broadcast, and 4 to 5 other stakeholders vested in the topic being developed. (Attendees fees, travel, and per diem for the planning meeting and the rehearsal/broadcast days are paid for by NIC and are not part of this award.) Attendees are told they are helping develop ideas for a broadcast on a specific topic. Participation in the planning meeting does not necessarily mean that participants will be used as talent during the live broadcast. **Note:** The exception may be if some of the attendees have been specifically determined by NIC to be critical to the broadcast because of their specific expertise or background.

NIC's DLA will lead meetings with the broadcast host(s) and video producer in attendance. (Costs associated with the producer's participation in the planning meetings and the rehearsal/broadcast days for each broadcast are to be included within this award.) The meeting will (1) set learning objectives, (2) develop a theme, metaphor, or other creative hook that will set a context for the broadcast (The hook will support the content of the broadcast and will assist in determining the creative approaches through which that content can be delivered in a live broadcast.), (3) develop a rough outline of key content for each broadcast segment, using content learning objectives as a guideline, (4) generate a list of resources (videos, photos, etc.) that could support the segment, (5) discretely determine which experts might be good on camera and involved in the future development process, and (6) determine potential segment team assignments for further content development if casting for an in-studio team is deemed appropriate.

Step Two: Cast the program after the meeting is complete. The producer, host(s), and DLA will meet with appropriate NIC staff soon after the planning meeting——the next day is preferred. Together, the meeting participants will (1) determine and finalize a list of presenters for the program, (2) determine the fields that the presenters should come from and what casting types are needed to cover each segment or content type (if needed), (3)create a cast list, (4) set deadlines for pre-interviewing and recruiting those available on the scheduled dates for the rehearsal and broadcast (Note: Selected talent must be available for both the rehearsal day and the broadcast day in order to participate.), (5) conduct pre-interviews to gather content and make suggestions for on-camera appearances, and (6) work with the DLA and appropriate NIC staff named as on-camera presenters and assign them to specific program segments.

Step Three: Develop content for the broadcast. The producer will schedule a call/video conference with the producer, host(s), DLA, and each segment's small group of presenters; review, revise, and annotate the broadcast outline; generate a further list of resources during the call (The producer may need two calls per segment, but the goal would be one.); and have the DLA sign off on the broadcast's content outline. If the broadcast is a 2-day interactive training broadcast, the producer will work directly with segment teams on the development of their segment outlines, in concert with the NIC DLA, and a designated broadcast curriculum materials developer if applicable.

Step Four: Develop the broadcast programming. The producer, host(s), and/or DLA will (1) outline the program and its elements, including content questions (most segments of each program will be designed so that a host(s) will facilitate each segment, rather than allowing small groups of practitioners to facilitate on their own.); (2) revise outlines and make initial testimonial selections, working from transcripts, acquired clips, and other source materials; (3) work with DLA to identify graphic/visual needs and content; (4) work with production staff to compile support materials (making direct contact with prisons, jails, etc.); (5) work with production staff to develop all graphics and visuals for approval; (6) work with the DLA to review and approve all materials and program development, including standardized intro and outro segments highlighting NIC and its graphic image. If the broadcast is a 2-day interactive training broadcast, the producer will work directly with segment teams on the above items, in concert with the NIC DLA and a designated broadcast curriculum materials developer if applicable.

Step Five: Prepare the broadcast.

The awardee will book one preparation call, in addition to the final run-through Webex with presenters/trainers the week before the cast and crew travel to the shoot location. The call will cover logistics and an overview of the agenda for the 2 days. On rehearsal day (typically, Tuesday morning), the producer will show all broadcast staff and talent the final video clips, graphics, and visuals, etc., and complete a technical run-through of the program. The host(s) and producer will lead staff through the program outline. **Note:** If the schedule allows, it would be best to have 12 to 14 weeks between each planning meeting and the broadcast. Please refer to ''Content Development Countdown'' attached to this announcement and also found on NIC's Web site at *http://static.nicic.gov/UserShared/2013-02-11_content_dev_countdown_2012_-_for_coop_agree_sol_final_(1).pdf.*

Production schedules will overlap to fit all broadcasts within the award period. It is necessary, due to the 12- to 14-week planning development process and minimum of 5 broadcasts (15 hours of broadcast time) to be delivered as part of this award (a combination of 3-hour and/or 2-day, 6 hour [3 hours each day] interactive training broadcasts), that the awardee prepare to provide ample time for one producer to be able to handle multiple projects at once and/or be staffed to provide multiple producers to achieve the scope of work for this agreement. A definitive plan to accomplish this role and function must be included in the proposal.

Pre-Production Video: The producer will supervise the production of vignettes to be used in each of the broadcasts, as well as the vignettes to be produced as stand-alone pieces to support other NIC curriculum projects. There will be twelve to fifteen of these vignettes in all. Content experts (typically, correctional professionals) will draft conceptual outlines of the scripts for each vignette. From these outlines, the producer (or a script writing expert) will develop scripts and have them approved by NIC's DLA. These scripts will be developed and approved in advance of the shoot and will generally use 2 to 4 speaking parts per scene (and additional extras). As topics are determined, the producer will work with the DLA to apportion the shooting days and/or to use those days to produce other equivalent creative elements for each broadcast.

The producer will budget for at least four 10-hour days of vignette shooting, which will include: (1) Professional actors playing the parts designated by the script, (2) a professional video crew, (3) professional quality scenery, props, and wardrobe elements, and (4) broadcast quality lighting and high definition camera gear. It is expected that each shooting day will include 3 to 6 scenes, each resulting in 1 to 4 minutes of screen time.

Additionally, testimonial video footage must be captured well in advance of broadcast delivery dates to ensure ample time for considering the clips for inclusion in the storyboard of a broadcast and to allow sufficient time for editing. These video clips are used in the broadcasts to support the content delivery and to provide transitions/bumps between segments/modules within the broadcast. NIC will provide the raw footage of up to 10 testimonial interviews (approximately 15 minutes each) to the producer for each of the five broadcasts. Testimonial footage will also be captured by the producer from video shoots that NIC will arrange to occur at 2 to 3 relevant correctional and/or criminal justice conferences where targeted audiences will generally convene. The producer will provide the interviewer, camera staff, and any required lighting and audio equipment for each conference testimonial shoot. The format for all field shooting will be either Betacam, DVD Pro Digital, and/or Mini DVD. NIC will also tape testimonial footage to be included in broadcasts at its National Corrections Academy Studio in Aurora, Colorado, and would expect the awardee to edit footage produced for inclusion in relevant broadcasts.

Video Production: Video production for each of the broadcasts and each video vignette for stand-alone projects will consist of videotaping content-related events in the field, editing existing video, and videotaping experts for testimonial presentations. It will also include voiceover, audio, and music, if necessary, for each broadcast or vignette. The awardee will develop a detailed storyboard/rundown for each broadcast. Significant contribution to the development of the storyboard/rundown will come from designated content experts, the talent selected to appear in the broadcasts, and the DLA. The DLA maintains final approval of all storyboards/rundowns, video, and other materials used in any broadcast. Innovative and thought-provoking opening sequences must be produced for each broadcast show open with graphics, video, and music. Show opens will be approximately 45 seconds in length. In addition, the broadcasts will use graphics to enhance viewer learning. Graphic design will be used as packaging for all video roll-ins and carried out through all PowerPoint slides and onscreen graphics.

The producer will coordinate art direction, lighting, set design, props, and furniture for all broadcast segments. Customized set design will be required for each broadcast. The producer will budget for a creative treatment that is unique to each broadcast, which will include simple on-set design elements (e.g., a freestanding door that opens, large scale graphics printed on foam core, lighting effects with customized gobos, thematic prop elements, etc. Each set will include signage, posters, props, and/or other visuals that clearly relate to the content of the broadcast. The producer will organize and supervise the complete production crew on rehearsal and production days.

Production: The awardee's production group will set up and maintain studio lighting, adjust audio, and have a complete production crew for the days and hours set by the DLA for each rehearsal and broadcast. The producer will coordinate art direction, lighting, set design, props, and furniture for all broadcast segments. Customized set design will be required for each broadcast. Each set should include signs, posters, props and/or other visuals that clearly relate to the content of the broadcast. The producer will organize and supervise the complete production crew on rehearsal and production days. A production crew shall include the following: Director, audio operator, video operator, character generator operator, floor director, four camera operators, teleprompter operator, online Internet coordinator, makeup artist (at production time only), and interactive assistance personnel (for fax, email, live online chat, and telephone communications).

Post-Production: The producer oversees the production and editing of a DVD of each broadcast for a final and approved cut by the DLA. Within one week after each broadcast, the awardee will provide the DLA a live and active link to the archived version of the broadcast. Within sixty (60) days after each broadcast, the awardee will provide the DLA five master copies of the edited and approved broadcast. Final file formats should be accessible for Mac, Windows, and mobile/tablet device (e.g., .mov, .mp4, .wmv). These copies must be provided on a single-sided DVD. The broadcast footage will need to be edited to include a splash page that provides an outline/menu of the content of the broadcast by modules, and/or other appropriate categories to assist users in finding specific content in which they may have an interest. Additionally, any original vignettes produced for the broadcast must be included on the DVD. All edits must be approved by the DLA. All final documents and other materials submitted under this project must meet the federal government's requirement for Section 508 accessibility, including those provisions outlined in 1194 Subpart B, Technical Provisions; Subpart C, Functional Performance Criteria; and Subpart D, Documentation and Support. NIC's voluntary product accessibility template (available at *www.nicic.gov/GPAT*) outlines the agency's minimum criteria for meeting this requirement.

Transmission: The producer will (1) purchase satellite uplink time that will include the footprints of Alaska, Hawaii, the Virgin Islands, and the continental United States; (2) acquire downlink transponder time from Ku band; (3) acquire Internet streaming capacity for up to 1000+ simultaneous downloads for delivery in a variety of formats including Mac, Windows, and mobile/tablet device for each program, (4) schedule and run up to five Internet streaming tests for viewing audience compatibility tests in advance of each scheduled program, and (5) be able to provide closed captioning on the final edited DVD of each production. For each broadcast, the awardee will test the Internet link and streaming. The test should verify connectivity to the site, as well as audio and video quality. The test must occur at least 72 hours prior to the start of the live broadcast. The awardee will provide real-time, live, toll-free telephone support to participant sites or individual participants to address access, connectivity, and quality issues on the day of the live broadcast beginning at least 1 hour in advance of the broadcast and continuing through the broadcast.

Equipment: Applicants must have a minimum of the following equipment: Broadcast studio of approximately 2,000 square feet, with an area for a studio audience of 10 to 20 people; four digital studio cameras (one of which must be an overhead camera with robotic control); chroma key: at least one wall with chroma key capability, along with a digital ultimate keying system, a tape operation facility providing playback/record in various formats, including DVD, Betacam, Betacam SP, SVHS, VHS, U-Matic ¾ and SP, and state-of-the-art editing bay that will be compatible with all platforms used in broadcast; three-dimensional animation with computer graphics; Internet streaming capacity for 1000+ simultaneous downloads in a variety of formats, and Microsoft Media Player-Capture Closed Captioning; archive ability for all satellite/Internet broadcasts from this agreement; computer teleprompter for at least three studio cameras; interruptible fold back or in-ear monitor for all presenters and the moderator/hosts during each live broadcast with individual control from the control room and the DLA; a method for the NIC DLA to receive verbal communications from on-camera talent on the studio floor during rehearsals and during the broadcasts; wireless microphones for each presenter/all talent during the live broadcasts; and microphones for the studio audience at each roundtable (they should be able to pick up audio) during the training program (It is expected that studio audiences will be used in at least four of the live broadcasts.); satellite uplink and transponder: Ku band digital with the footprints of Alaska, Hawaii, Virgin Islands, and the continental United States; Web/Internet equipment for Internet link during live broadcasts with enough capacity to support the broadcasts' expected audience; and portable field equipment (digital video cameras with recording decks, portable lighting kits, microphones [both hand-held and lapel], field monitors, audio mixers, and camera tripods).

Personnel: Applicants must have a minimum of the following qualified personnel: Producer/director; script writer; set designer; lighting designer; audio operator; graphics operator; tape operator; location camera operator; teleprompter operator; clerical/administrative support; makeup artist (as needed during live production); closed caption operator (as needed during production).

Application Requirements: Applications should be concisely written, typed double spaced, and reference the project by the ''NIC Opportunity Number'' and Title in this announcement. The package must include a cover letter that identifies the audit agency responsible for the applicant's financial accounts, as well as the audit period or fiscal year that the applicant operates under (e.g., July 1 through June 30); a program narrative in response to the statement of work; a budget narrative in response to the statement of work; and a budget narrative explaining projected costs. The following forms must also be included: OMB Standard Form 424, Application for Federal Assistance; OMB Standard Form 424B, Assurances—Non-Construction Programs (These forms are available at *http://www.grants.gov*) and DOJ/NIC Certification Regarding Lobbying; Debarment, Suspension and other Responsibility Matters; and Drug-Free Workplace Requirements (available at *http://www.nicic.gov/Downloads/General/certif-frm.pdf* Applications may be submitted in hard copy, or electronically via *http://www.grants.gov*. If submitted in hard copy, there must be an original and three copies of the full proposal (program and budget narratives, application forms, and assurances). The original should have the applicant's signature in blue ink.

Authority: Pub. L. 93–415.

Funds Available: NIC is seeking the applicant's best ideas regarding accomplishment of the scope of work and the related costs for achieving the goals of this solicitation. Funds may be used only for activities that are linked to the desired outcome of the project.

This project will be a collaborative venture with the NIC Academy Division.

Eligibility of Applicants: An eligible applicant is any public or private agency, educational institution, organization, individual, or team with expertise in the described areas.

Review Considerations: Applications received under this announcement will be subjected to an NIC 3- to 5-member review panel. The criteria for the evaluation of each application will be as follows:

Technical and Programmatic (30%)

Are all elements outlined within the scope of work effectively understood and a description provided of how each element will be addressed? Is there a complete and precise, technically sufficient description of the design and methodology for the required services? Is there a clear statement of how each project deliverable will be accomplished, including major tasks that will lead to achieving the goal, the strategies to be employed, required staffing, and other required resources? Are there any innovative approaches, techniques, or design aspects proposed that will enhance the project?

Organizational (40%)

Does the proposed project staff possess the skills, knowledge, and expertise necessary to complete the tasks, including all of the elements listed within the project scope of work? Does the applicant agency, institution, organization, individual, or team have the organizational capacity to complete all deliverables? If consultants and/or partnerships are proposed, is there a reasonable justification for their inclusion in the project and a clear structure to ensure effective coordination? Does the applicant demonstrate the ability to purchase satellite uplink and Internet streaming with closed captioning? Does the applicant demonstrate the ability to produce vignettes and capture testimonials for each broadcast? Are the proposed project management and staffing plans realistic and sufficient to complete the project within the award period? Is the proposed budget realistic, does it provide sufficient cost detail/narrative, and does it represent good value relative to the anticipated results? Is the applicant able to work within the time constraints outlined in the solicitation?

Past Performance (30%)

Is the applicant experienced in producing live broadcasts, in producing training video to support program and training content, or in capturing video from field locations? Does the applicant have experience writing original, scripted content for broadcast? Has the applicant worked with non-professional actors/talent in the past? Can the applicant provide adequate studio space and all equipment necessary to produce the required deliverables? Does the applicant provide audiovisual examples of past work?

Note: NIC will not award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR).

A DUNS number can be received at no cost by calling the dedicated toll-free DUNS number request line at 1–800–333–0505 (if you are a sole proprietor, you would dial 1–866–705–5711 and select option 1).

Registration in the CRR can be done online at the CRR *Web site: www.ccr.gov*. A CRR Handbook and worksheet can also be reviewed at the Web site.

Number of Awards: One

NIC Opportunity Number: 13AC02. This number should appear as a reference line in your cover letter, where indicated on Standard Form 424, and on the outside of the envelope in which the application is sent.

Catalog Federal Domestic Assistance Number: 16.601.

Executive Order 12372: This program is not subject to the provisions of Executive Order 12372.

Robert Brown,

Acting Director, National Institute of Corrections.

[FR Doc. 2013–03529 Filed 2–14–13; 8:45 am]

BILLING CODE 4410–36–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–82,180]

Comcast Cable, West Division Customer Care, Morgan Hill, CA; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated January 29, 2013, a worker requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of the subject firm. The determination was issued on December 27, 2012 and the Notice of Determination was published in the **Federal Register** on January 10, 2013 (78 FR 2290). The workers' firm supply call center functions related to sales services for Comcast products, including video, telephone, and high-speed Internet.

The negative determination was based on the findings that the subject firm did not shift or import the supply of services like or directly competitive with those provided by the subject firm.

The request for reconsideration included new information regarding a possible connection to an affiliated facility that employed workers who are eligible to apply for TAA.

The Department carefully reviewed the request for reconsideration and the existing record, and will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974, as amended.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 31st day of January, 2013.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2013–03542 Filed 2–14–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of January 28, 2013 through February 1, 2013.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
81,855	VMC Consulting, VMC Division, Volt Information Sciences, Volt Workforce Solutions.	Redmond, WA	August 3, 2011.
82,219	TeleTech Services Corporation, HP Notebook Tech Support, TeleTech Holdings, Inc.	Springfield, MO	December 5, 2011.
82,251	Cooper Hosiery Mill, Inc	Fort Payne, AL	December 30, 2012.
82,252	Heritage Footwear Inc	Fort Payne, AL	December 12, 2011.
82,260	H.B. Smith Company, Inc (The)	Westfield, MA	July 22, 2012.
82,268	Red Wing Shoe Company, Inc	Danville, KY	April 29, 2012.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
82,021	Cyberdefender	Los Angeles, CA	September 27, 2011.
82,160	Redman Card Clothing Co., Inc.	Andover, MA	November 15, 2011.
82,236	CVPH Medical Center	Plattsburgh, NY	December 11, 2011.
82,239	Hewlett Packard Enterprise Services, LLC, Technical/Enterprise Services Division, SAIT Services.	Santa Monica, CA	December 10, 2011.
82,250	YP Western Directory LLC, Anaheim California Div., Publishing Operation, YP Western Holding YP Advertising.	Anaheim, CA	December 12, 2011.
82,257	Harley-Davidson Motor Company, Global Information Services	Milwaukee, WI	December 14, 2011.
82,257A	Harley-Davidson Motor Company, Global Information Services	Kansas City, MO	December 14, 2011.
82,257B	Harley-Davidson Motor Company, Global Information Services	Doral, FL	December 14, 2011.
82,257C	Harley-Davidson Motor Company, Global Information Services	Wauwatosa, WI	December 14, 2011.
82,257D	Harley-Davidson Motor Company, Global Information Services	Menomonee Falls, WI	December 14, 2011.
82,257E	Harley-Davidson Motor Company, Global Information Services	Tomahawk, WI	December 14, 2011.
82,257F	Harley-Davidson Motor Company, Global Information Services	York, PA	December 14, 2011.
82,257G	Harley-Davidson Financial Services, Inc., Global Information Services	Chicago, IL	December 14, 2011.
82,257H	Harley-Davidson Financial Services, Inc., Global Information Services	Carson City, NV	December 14, 2011.
82,257I	Harley-Davidson Financial Services, Inc., Global Information Services	Plano, TX	December 14, 2011.
82,259	YP Texas Region Yellow Pages LLC, St. Louis Missouri Div., Publishing Operations, YP Texas Region Advertising.	St. Louis, MO	December 14, 2011.
82,275	Delphi Automotive Systems, LLC, Products and Service Solutions Div., Original Equipment, Bartech Workforce.	Kokomo, IN	December 18, 2011.
82,283	Reckitt Benckiser, LLC, Guidant Group, Link Staffing, Raleys Superior Cleaning.	Fort Worth, TX	December 19, 2011.
82,291	Independent Record, Creative Department, Lee Enterprises, Inc	Helena, MT	December 26, 2011.
82,291A	Montana Standard, Creative Department, Lee Enterprises, Inc	Butte, MT	December 26, 2011.
82,325	TE Connectivity, Kelly Services, Adecco and Precision Parts Systems	Greensboro, NC	December 11, 2011.
82,328	Cequent Performance Products, Inc., TriMas Corporation, Pro Resources.	Huntington, IN	January 8, 2012.
82,333	West Business Solutions, LLC, West Corporation	Tulsa, OK	December 14, 2011.
82,354	Federal-Mogul Powertrain, Inc., Federal-Mogul Corporation	Lake City, MN	January 17, 2012.

The following certifications have been issued. The requirements of Section 222(f) (firms identified by the International Trade Commission) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
82,285	U.S. Steel Tubular Products, Inc., McKeesport Tubular Operations Div., United States Steel Corp..	McKeesport, PA	March 3, 2010.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1) (employment decline or threat of separation) of section 222 has not been met.

TA–W No.	Subject firm	Location	Impact date
82,316	Donald Nell dba Wholesalers	Cudahy, WI	

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
82,159	Home Dynamix, LLC	Moonachie, NJ.	
82,245	Filmtec Corporation	Edina, MN.	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
82,198	American Foils, Inc	New Brunswick, NJ.	

I hereby certify that the aforementioned determinations were issued during the period of January 28, 2013 through February 1, 2013. These determinations are available on the Department's Web site tradeact/taa/taa search form.cfm under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Dated: February 5, 2013.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance .

[FR Doc. 2013–03539 Filed 2–14–13; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 25, 2013.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 25, 2013.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 6th day of February 2013.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 1/28/13 and 2/1/13]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
82370	Mega Life & Health Insurance Company (The) (Company)	N. Richland Hills, TX	01/28/13	01/28/13
82371	T-Mobile (Customer Fault Isolation Te) (Workers)	Bethlehem, PA	01/28/13	01/24/13
82372	Hostess Brands (State/One-Stop)	Wichita, KS	01/28/13	01/28/13
82373	Gerdau Ameristeel (State/One-Stop)	Saint Paul, MN	01/28/13	01/25/13
82374	Catholic Health Initiatives (State/One-Stop)	Lincoln, NE	01/28/13	01/28/13
82375	Apex Tool Group (Company)	Gastonia, NC	01/29/13	01/25/13
82376	Schneider Electric (Company)	Columbia, MO	01/29/13	01/28/13
82377	Allied-Baltic Rubber, Inc. dba Zhongding USA, Inc. (Company).	Strasburg, OH	01/29/13	01/24/13
82378	Joint Active Systems (Bonutti Technologies is Identified as Parent Company) (State/One-Stop).	Effingham, IL	01/29/13	01/28/13
82379	Abbott Laboratories—Diagnostic Division (Company)	Santa Clara, CA	01/29/13	01/28/13
82380	Red Rock Medical Billing, LLC (State/One-Stop)	Las Vegas, NV	01/29/13	01/28/13
82381	BorgWarner Morse Tec. (Union)	Cortland & Ithaca, NY	01/29/13	01/23/13
82382	Amdocs, Inc (State/One-Stop)	New Haven, CT	01/29/13	01/21/13
82383	Sysco Corporation (Workers)	Plympton, MA	01/29/13	01/28/13
82384	Schawk Inc. (Workers)	Atlanta, GA	01/30/13	01/30/13
82385	Closure System Int. (Workers)	Randolph, NY	01/30/13	01/08/13
82386	Mahle Engine Components US, LLC (Union)	McConnelsville, OH	01/30/13	01/29/13
82387	Hoover's, Inc. a subsidiary of Dun & Bradstreet (State/One-Stop).	Austin, TX	01/30/13	01/29/13
82388	Aleris Recycling Bens Run, LLC (Union)	Friendly, WV	01/30/13	01/29/13
82389	Elster AMCO Water Inc. (State/One-Stop)	Ocala, FL	01/30/13	01/29/13
82390	Plantronics, Inc (Workers)	Santa Cruz, CA	01/30/13	01/29/13
82391	Bacova Guild, Ltd. (Company)	Covington, VA	01/31/13	01/30/13
82392	ABB Inc. (Company)	Mount Pleasant, PA	01/31/13	01/30/13
82393	Royal Appliance Mfg. Co. (Company)	El Paso, TX	01/31/13	01/29/13
82394	YP Holdings LLC (Formerly AT&T Advertising Solutions) (Workers).	Nashville, TN	01/31/13	01/30/13
82395	A.E. Petsche Company (Company)	Arlington, TX	01/31/13	01/29/13
82396	Sealy Mattress Company, Portland, OR (Union)	Portland, OR	01/31/13	01/29/13
82397	Hostess Brands (Workers)	Erie, PA	01/31/13	01/30/13
82398	YP Holding LLC (Workers)	Tucker, GA	01/31/13	01/30/13
82399	Berwick Offray LLC (Workers)	Berwick, PA	01/31/13	01/30/13
82400	Invesco Management Group, Inc. (Workers)	Houston, TX	01/31/13	01/30/13
82401	YP Midwest Publishing LLC (Workers)	Southfield, MI	02/01/13	01/31/13
82402	YP Holdings LLC (Workers)	Brookfield, WI	02/01/13	01/31/13
82403	Elbeco Inc. dba City Shirt Company (Company)	Frackville, PA	02/01/13	01/31/13
82404	NGN Global Inc. (State/One-Stop)	Portland, ME	02/01/13	01/31/13
82405	Boise Paper Holdings, LLC (Company)	Boise, ID	02/01/13	02/01/13
82406	360 Enterprises Inc. (State/One-Stop)	Phoenix, AZ	02/01/13	01/18/13

[FR Doc. 2013–03540 Filed 2–14–13; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below to modify the application of existing mandatory safety standards codified in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before March 18, 2013.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 202–693–9441.

3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: George F. Triebsch, Director, Office of Standards, Regulations and Variances. Persons delivering documents are required to check in at the receptionist's desk on the 21st floor. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine

Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket Number: M–2013–002–C.

Petitioner: Wheels Coal Company, 59 Main Street, Tremont, Pennsylvania 17981.

Mine: No. 5 Vein Mine, MSHA I.D. No. 36–08679, located in Schuylkill County, Pennsylvania.

Regulation Affected: 30 CFR 75.1200(d) & (i) (Mine map).

Modification Request: The petitioner requests a modification of the existing standard to permit the use of cross-sections in lieu of contour lines on mine maps through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 feet intervals of advance from the intake slope. In addition, the petitioner proposes to limit the required mapping of mine workings above and below to those present within 100 feet of the vein(s) being mined unless the veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner states that:

1. Due to the steep pitch encountered in mining anthracite coal veins, contours provide no useful information and their presence would make portions of the map illegible.

2. The use of cross-sections in lieu of contour lines has been practiced since the late 1800's and provides critical information about spacing between veins and proximity to other mine workings, which fluctuate considerably.

3. The vast majority of current underground anthracite mining involves either second mining of remnant pillars from previous mining or the mining of veins of lower quality in proximity to inaccessible and frequently flooded abandoned mine workings that may or may not be mapped.

4. All mapping for mines above and below is researched by the petitioner's contract engineer for the presence of interconnecting rock tunnels between veins in relation to the mine, and a hazard analysis is done when mapping indicates the presence of known or potentially flooded workings.

5. When no rock tunnel connections are found, mine workings that exist beyond 100 feet from our mine, are recognized as presenting no hazard to the mine due to the pitch of the vein and rock separation.

6. Additionally, the mine workings above and below are usually inactive and abandoned and, therefore, are not usually subject to changes during the life of the mine.

7. Where evidence indicates prior mining was conducted on a vein above or below and research exhausts the availability of mine mapping, the vein will be considered mined and flooded and appropriate precautions will be taken through § 75.388, which addresses drilling boreholes in advance of mining, where possible.

8. Where potential hazards exist and in-mine drilling capabilities limit penetration, surface boreholes may be used to intercept the workings and the results analyzed prior to beginning mining in the affected area.

The petitioner asserts that the proposed alternative method will provide no less than the same measure of protection afforded the miners under the existing standard.

Docket Number: M–2013–003–C.

Petitioner: Wheels Coal Company, 59 Main Street, Tremont, Pennsylvania 17981.

Mine: No. 5 Vein Mine, MSHA I.D. No. 36–08679, located in Schuylkill County, Pennsylvania.

Regulation Affected: 30 CFR 75.1202–1(a) (Temporary notations, revisions and requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit the interval of survey to be established on an annual basis from the initial survey in lieu of every 6 months as required. The petitioner proposes to continue to update the mine map by hand notations on a daily basis and conduct subsequent surveys prior to commencing retreat mining, and whenever either a drilling program under § 75.388 or plan for mining into inaccessible areas under § 75.389 is required. The petitioner states that:

1. The low production and slow rate of advance in anthracite mining make surveying on 6-month intervals impractical. In most cases annual development is frequently limited to less than 500 feet of gangway advance with associated up-pitch development.

2. The vast majority of small anthracite mines are non-mechanized and use hand-loading mining methods.

3. Development above the active gangway is designed to mine into the level above at designated intervals thereby maintaining sufficient control between both surveyed gangways.

4. The available engineering/surveyor resources are limited in the anthracite coal fields and surveying on an annual basis is difficult to achieve with four individual contractors currently available.

The petitioner asserts that the proposed alternative method will provide no less than the same measure of protection afforded the miners under the existing standard.

Docket Number: M–2013–004–C.

Petitioner: Wheels Coal Company, 59 Main Street, Tremont, Pennsylvania 17981.

Mine: No. 5 Vein Mine, MSHA I.D. No. 36–08679, located in Schuylkill County, Pennsylvania.

Regulation Affected: 30 CFR 75.1400 (Hoisting equipment; general).

Modification Request: The petitioner requests a modification of the existing standard for cages, platforms, or other devices used to transport persons in shafts or slopes in underground coal mines. The petitioner seeks to permit the use of a slope conveyance (gunboat) to transport persons without safety catches or other no less effective devices but instead use an increased rope strength/safety factor and secondary safety rope connection in place of such devices. The petitioner states that:

1. No such safety catch or device is available for steeply pitching and undulating slopes with numerous curves and knuckles present in the main haulage slopes of anthracite mines.

2. A functional safety catch capable of working in slopes with knuckles and curves is not commercially available. If a makeshift device is installed it would activate on knuckles or curves when no emergency existed, causing a tumbling effect on the conveyance which would increase rather than decrease the hazard to miners.

3. A safer alternative is to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat and to the hoisting rope above the main connecting device and use hoisting ropes having a factor of safety greater than the American Standards Specifications for the Use of Wire Rope in Mines.

The petitioner asserts that the proposed alternative method will provide no less than the same measure of protection afforded the miners under the existing standard.

Docket Number: M–2013–003–M.

Petitioner: Badger Mining Corporation, N7815 County Highway P, Taylor, Wisconsin 54659.

Mine: Taylor Plant, MSHA I.D. No. 47–02555, P.O. Box 160, Taylor, Wisconsin 54659, located in Jackson County, Wisconsin.

Regulation Affected: 30 CFR 56.13020 (Use of compressed air).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method for implementing a clothes cleaning process that uses regulated compressed air for cleaning miners' dust-laden clothing. The petitioner states that:

1. Only miners trained in the operation of the clothes cleaning booth will be permitted to use the booth to clean their clothes.

2. The petitioner will incorporate the National Institute for Occupational Safety and Health (NIOSH) Clothes Cleaning Process and Manufacturer's Instruction Manuals into their MSHA Part 46 Training Plan and train affected miners in the process.

3. Miners entering the booth will examine valves and nozzles for damage or malfunction and will close the door fully before opening the air valve. Any defects will be repaired prior to the booth being used.

4. Miners entering the booth will wear eye protection, ear plugs or muffs for hearing protection, and half-mask fit-tested respirator (disposable or reusable) that meets or exceeds the minimum requirements of a N95 filter for respiratory protection. A sign will be conspicuously posted requiring the use of personal protective equipment when entering the booth.

5. Airflow through the booth will be sufficient to maintain negative pressure during use of the cleaning system to prevent contamination of the environment outside the booth. Airflow will be in a downward direction to move contaminants away from the miner's breathing zone.

6. Air pressure through the spray manifold will be limited to 30 pounds per square inch or less. A lock box with a single secondary crusher key controlled by the supervisor will be used to prevent regulator tampering.

7. The air spray manifold will consist of a 1½ inch, square tube with ¼-inch wall thickness capped at the base and actuated by an electrically controlled valve at the top.

8. Air spray manifold will contain 27 nozzles at 30 pounds per square inch gauge.

9. The uppermost spray of the spray manifold will be located not more than 56 inches from the floor.

10. Side deflectors will be used to eliminate the possibility of incidental contact with the air nozzles during the clothes cleaning process.

11. The petitioner will conduct periodic maintenance checks of the booth according to the recommendations contained in the NIOSH Clothes Cleaning Process Instruction Manual.

12. The air receiver tank supplying air to the manifold system will be of sufficient volume to permit no less than 20 seconds of continuous clothes cleaning time.

13. An appropriate hazard warning sign will be posted on the booth to state, at a minimum, ''Compressed Air'' and ''Respirable Silica Dust''.

14. Minimum performance criteria for the local exhaust ventilation system servicing the booth will be maintained at all times. Provisions will be established by the Petitioner to remove the booth from service if the volumetric airflow falls below 80 percent of original design capacity and/or booth negative pressure falls below 0.1 water gauge.

15. A pressure relief valve design for the booth's minimum 240-gallon air reservoir will be installed.

16. The air inlet filter located on top of the booth will have a filter system that is rated to remove particles less than 10 microns in size.

The petitioner further states that:

1. The alternative method provides a direct reduction of miners' exposure to respirable crystalline dust, thus reducing their health risks while providing no less than the same degree of safety provided by the existing standard.

2. The alternative method has been jointly developed and successfully tested by the NIOSH.

Dated: February 12, 2013.

George F. Triebsch,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 2013–03583 Filed 2–14–13; 8:45 am]

BILLING CODE 4510–43–P

OFFICE OF MANAGEMENT AND BUDGET

Notification of a Public Meeting on the Use of Cost Comparisons in Federal Procurement

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of a public meeting and request for comments.

SUMMARY: The Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget (OMB) seeks input from the public on the practice of comparing the relative cost of performance by Federal employees versus contract performance in order to identify the most cost-effective source. OFPP intends to consider feedback received in response to this notice as it evaluates existing policies addressing cost comparisons and considers new ones to help agencies save money and drive better results. Feedback will also be considered in connection with the development of guidance required by section 1655 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013, Public Law 112–239. Section 1655 requires OMB to publish guidance addressing the conversion of a function being performed by a small business concern to performance by a Federal employee.

Interested parties may offer oral and/or written comments at a public meeting to be held on March 5, 2013. Parties are also encouraged to provide all written comments directly to *www.regulations.gov.*

DATES: A public meeting will be conducted on Tuesday March 5, 2013 at 2 p.m. eastern time and is expected to conclude not later than 5 p.m. eastern time.

Procedures for the public meeting:

The public is asked to pre-register by Friday March 1, 2013, due to security limitations. To pre-register, please send an email to Ms. Aisha Hasan of OFPP at *ahasan@omb.eop.gov.* Registration check-in will begin at 1 p.m. eastern time and the meeting will start at 2 p.m. eastern time.

Oral Public Comments: Parties wishing to make formal oral presentations at the public meeting must contact Ms. Aisha Hasan by electronic mail at *ahasan@omb.eop.gov* no later than Friday March 1, 2013, to be placed on the public speaker list. Time allocations for oral presentations will be limited to five minutes. All formal oral public comments should also be followed-up in writing and submitted to *www.regulations.gov.* When submitting your comments, reference ''Public Comments on the Use of Cost Comparisons.'' **Note:** Requests made after the deadline for formal oral presentations will be permitted as time permits and assigned based on the order the requests are received.

Written Comments/Statements: In lieu of, or in addition to, participating in the public meeting, interested parties may submit written comments to *www.regulations.gov* by April 15, 2013. When submitting your comments, reference ''Public Comments on the Use of Cost Comparisons.'' Parties wishing to share written statements at the public meeting must submit such statements to Ms. Hasan at *ahasan@omb.eop.gov* by March 1, 2013.

ADDRESSES: The public meeting will be held at the General Services Administration Auditorium located at 1800 F Street NW., Washington, DC, 20405.

Meeting Accommodations: The public meeting is physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to Ms. Lague at *deborah.lague@gsa.gov* or 202–694–8149 by February 25, 2013.

The TTY number for further information is: 1–800–877–8339. When the operator answers the call, let them know the agency is the General Services Administration; the point-of-contact is Deborah Lague at 202–694–8149.

FOR FURTHER INFORMATION CONTACT: *For clarification of the subject matter related to the memorandum:* Mr. Mathew Blum, OFPP, (202) 395–4953 or *mblum@omb.eop.gov* or Mr. Jim Wade, OFPP, (202) 395–2181 or *jwade@omb.eop.gov.*

For public meeting information and submission of comment: Ms. Aisha Hasan, OFPP, (202) 395–6811 or *ahasan@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: From the start of the Administration, it has been a priority to make sure agencies apply fiscally responsible acquisition practices that cut contracting costs and better protect taxpayers from cost overruns and poor performance. In response, agencies have been taking steps to buy less and buy smarter. These steps include cutting unnecessary contract spending and launching new efforts to pool the government's buying power. These efforts are paying off. FY 2012's total spending on contracts was $35 billion less than the amount spent in FY 2009, marking the largest three-year decline in Federal contract spending on record. (For additional information on the Federal government-wide contracting achievements, go to *http://www.whitehouse.gov/blog/2012/12/06/historic-savings-contracting-and-plans-more.*)

To build on these efforts, OFPP has kicked off an initiative to consider how agencies may achieve further savings and drive even better results through the use of cost comparisons in appropriate circumstances. Cost comparison is the term used to describe the practice of comparing the cost of a private sector contractor performing a defined task, or set of tasks, to the cost of having Federal employees perform the same task(s) where the work is suitable for performance by either sector. This tool offers a number of benefits. A cost comparison can help the agency validate whether the current sector performing the work is the more cost-effective source. Where this is not the case, the cost comparison may be used to encourage the sector currently performing the work to adopt more efficient practices. Where the difference in cost between the public and private sectors for performance of the same task is significant, the comparison may support conversion of work from one sector to the other, in accordance with law, including any limitations imposed thereon.

OFPP seeks public comment on how agencies can best incorporate cost comparisons into their management practices and especially welcomes public comment on the following three issues: (1) When cost comparisons are likely to be beneficial, (2) what principles should guide the conduct of a cost comparison, and (3) what special considerations should be involved when work is currently being performed by a small business contractor. Additional explanation and discussion questions are set forth below.

A. Suitability

Like most management practices, cost comparisons are not a ''one-size-fits-all'' tool. A number of factors need to be considered to identify when a cost comparison may be appropriate and, when appropriate, where the agency is likely to derive benefit from using a cost comparison. For example, a cost comparison would not be appropriate if an agency decides that a particular requirement is no longer needed, or no longer affordable, no matter who performs the work. A cost comparison would also not be appropriate if only one sector is suitable for performing a given requirement. For example, performance of work by the private sector would not be suitable if the work to be performed involves (i) an inherently governmental function, (ii) a critical function to the extent that human capital and/or risk analysis shows that there is not a sufficient number of Federal employees performing, or managing, the function so that the agency can maintain control of its mission and operations, or (iii) an unauthorized personal service. These limitations are explained in OFPP Policy Letter 11–1, *Performance of Inherently Governmental and Critical Functions,* available at *http://www.whitehouse.gov/omb/procurement_index_work_performance/*, and OMB Memorandum M–09–26, *Managing the Multi-Sector Workforce,* available at *http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_fy2009/m-09–26.pdf*.

At the same time, as explained in Policy Letter 11–01 and Memorandum M–09–26, there are many requirements that may be suitable for performance by either the public or private sector, such as positions within critical functions where the agency has determined it has the internal capacity to maintain control over its operations and work that is not inherently governmental, closely associated to an inherently governmental function, or critical.

1. In situations where either sector may be suitable to perform the work, what factors should an agency take into account to determine if a cost comparison is likely to be beneficial?

2. What considerations would be helpful in prioritizing which functions are studied first?

B. Procedures

When an agency determines that a cost comparison may be beneficial, it must have principles and procedures to support the conduct of a cost comparison.

Guiding principles. OMB Memorandum M–09–26 provides two overarching principles for a cost analysis, namely, it must (a) provide ''like comparisons'' of costs that are of a sufficient magnitude to influence the final decision on the most cost effective source of support for the organization and (b) address the full costs of government and private sector performance.

1. What additional guiding principles and/or clarification of the above principles would be helpful?

2. What guidance might be provided regarding tracking of results to ensure expected benefits identified in the cost comparison have been realized?

Cost principles. For many years, costing principles to facilitate the comparison of costs between the public and private sectors have been provided in Appendix C of OMB Circular A–76, available at *http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a076/a76_incl_tech_correction.pdf*. These factors were developed to support the use of public-private competition but also can be used to compare the relative cost of each sector's performance without conducting a competition.

3. What changes and/or clarifications might be considered to improve the

effectiveness of these principles in the conduct of a cost comparison?

4. In 2010, the Department of Defense established business rules for use in estimating and comparing the full costs of military and civilian manpower and contract support. See Directive-Type Memorandum (DTM) 09–007, ''Estimating and Comparing the Full Costs of Civilian and Military Manpower and Contract Support,'' available at *http://www.dtic.mil/whs/directives/corres/pdf/DTM–09–007.pdf*. What, if any, principles might be considered for adoption government-wide?

C. Small Business Considerations

Section 1655 of the NDAA for FY 2013 requires OMB to publish procedures and methodologies to be used by Federal agencies with respect to decisions to convert a function being performed by a small business concern to performance by a Federal employee, including procedures and methodologies for determining which contracts will be studied for potential conversion.

Section 5–3 of Policy Letter 11–01 includes management guidance in connection with small business contracting. Specifically, section 5–3:

• Instructs agencies to place a lower priority on reviewing work performed by small businesses where the work is not inherently governmental and where continued contractor performance does not put the agency at risk of losing control of its mission or operations, especially if the agency has not recently met, or currently is having difficulty meeting, its small business goals;

• encourages agencies to involve their small business advocates if considering the insourcing of work currently being performed by small businesses; and

• instructs agencies that make a management decision to insource work that is currently being performed by both small and large businesses, to apply the ''rule of two'' to the work that will continue to be performed by contractors (the rule of two calls for a contract to be set aside for small businesses when at least two small businesses can do the work for a fair market price).

1. What additional factors might be considered, if any, in addition to those identified in Policy Letter 11–01, to determine where it may be appropriate to insource work that is otherwise suitable for performance by a small business contractor?

2. Section 1655 also requires OMB's guidance to address procedures and methodologies for estimating and comparing costs. If a situation arises where it is appropriate to consider a cost-based insourcing of work currently being performed by a small business, to what extent, if any, should costing procedures and methodologies differ from those used to evaluate the cost effectiveness of other than small businesses?

Joseph G. Jordan,

Administrator for Federal Procurement Policy.

[FR Doc. 2013–03581 Filed 2–14–13; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (13–014)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, in its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of NASA.

FOR FURTHER INFORMATION CONTACT: Requests for additional Information or copies of the information collection instrument(s) and instructions should be directed to Ms. Frances Teel, NASA Clearance Officer, NASA Headquarters, 300 E Street SW., JF000, Washington, DC 20546, *Frances.C.Teel@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

In accordance with Executive Order 13506 establishing the White House Council on Women and Girls, the Women@NASA Program was created to provide mentoring opportunities in science, technology, engineering, and math (STEM) disciplines for female students. To support the White House *Educate to Innovate* campaign, the Women@NASA Program was expanded to offer an equivalent program for young males called NASA Building Outstanding Young Scientists (BOYS). Both programs are designed to engage underrepresented rising 5th–8th grade students in a one-on-one virtual mentoring experience, under parental/adult supervision, one hour per week for a five-week period. Participants will be selected from a diverse set of geographical locations across the USA.

This clearance request pertains to the collection of information associated with the administration of electronic application forms, parental consent forms, and pre and post parent/student surveys. Surveys are designed to gauge participant interest in STEM subjects before and after the virtual mentoring experience, measure the program impact, access the effectiveness of the virtual mentoring approach and identify opportunities for improvement.

II. Method of Collection

Electronic.

III. Data

Title: NASA Girls and Boys Virtual Mentoring Program.

OMB Number: 2700–XXXX.

Type of review: New Information Collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 4,800.

Estimated Time Per Response: Variable.

Estimated Total Annual Burden Hours: 2,600.

Estimated Total Annual Cost: $170,000.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection.

They will also become a matter of public record.

Frances Teel,

NASA PRA Clearance Officer.

[FR Doc. 2013–03562 Filed 2–14–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 13–013]

Information Collection Notice/NASA Great Moonbuggy Race

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: NASA Information Collection Notice; Correction.

Federal Register Citation of Previous Announcement: 76 FR 23339, Document Number 2013–01648, Notice Number 12–004, dated January 28, 2013.

SUMMARY: The National Aeronautics and Space Administration published a notice in the **Federal Register** of January 28, 2013, inviting the general public and other Federal agencies to comment on a proposed information collection; the NASA Great Moonbuggy Race, as required by the Paperwork Reduction Act of 1995.

Correction: In Section III Data, the Estimated Total Annual Burden Hours is 118.

FOR FURTHER INFORMATION CONTACT: Ms. Frances Teel, NASA Clearance Officer, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–2225.

SUPPLEMENTARY INFORMATION: This information collection supports the President's initiative to create opportunities to advance science, technology, engineering, and mathematics (STEM) education. The Great Moonbuggy race is a vehicular engineering experience that targets high school and college students and connects classroom training to tangible activities that enable practical application of STEM disciplines, cultivates innovative thinking, and embraces teamwork. This event is inspired by the original lunar rover that piloted across the Moon's surface in the early 1970's. Participating students will design a vehicle that addresses a series of engineering problems similar to problems faced by the original Moonbuggy. Comments are invited on (1) whether the proposed collection of information is necessary for the proper performance of the functions at NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents; including automated collection techniques or the use of other information technology.

Frances Teel,

PRA Clearance Officer, National Aeronautics and Space Administration.

[FR Doc. 2013–03527 Filed 2–14–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that 16 meetings of the Humanities Panel will be held during March, 2013 as follows. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965 (20 U.S.C. 951–960, as amended).

DATES: See Supplementary Information section for meeting dates.

ADDRESSES: The meetings will be held at the Old Post Office Building, 1100 Pennsylvania Ave., NW., Washington, DC 20506. See Supplementary Information section for meeting room numbers.

FOR FURTHER INFORMATION CONTACT: Lisette Voyatzis, Committee Management Officer, 1100 Pennsylvania Ave. NW., Room 529, Washington, DC 20506, or call (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the National Endowment for the Humanities' TDD terminal at (202) 606–8282.

SUPPLEMENTARY INFORMATION:

Meetings

1. *Date:* March 12, 2013.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.

This meeting will discuss applications for the Collaborative Research grant program on the subject of New World Archaeology and Anthropology, submitted to the Division of Research Programs.

2. *Date:* March 13, 2013.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.

This meeting will discuss applications for the Scholarly Editions grant program on the subject of Literature, submitted to the Division of Research Programs.

3. Date: March 18, 2013.
Time: 8:30 a.m. to 5:00 p.m.
Room: 421.

This meeting will discuss applications for the America's Media Makers Production grant program on the subject of U.S. History of the eighteenth and nineteenth centuries, submitted to the Division of Public Programs.

4. Date: March 19, 2013.
Time: 8:30 a.m. to 5:00 p.m.
Room: 421.

This meeting will discuss applications for the America's Historical & Cultural Organizations Implementation grant program on the subject of the U.S. South and African American History, submitted to the Division of Public Programs.

5. Date: March 19, 2013.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.

This meeting will discuss applications for the Sustaining Cultural Heritage Collections grant program, submitted to the Division of Preservation and Access.

6. Date: March 19, 2013.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.

This meeting will discuss applications for the Scholarly Editions grant program on the subject of American History, submitted to the Division of Research Programs.

7. Date: March 20, 2013,
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.

This meeting will discuss applications for the Collaborative Research grant program on the subject of Old World Archaeology and Classics, submitted to the Division of Research Programs.

8. Date: March 21, 2013.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415.

This meeting will discuss applications for the Sustaining Cultural Heritage Collections grant program, submitted to the Division of Preservation and Access.

9. Date: March 21, 2013.
Time: 8:30 a.m. to 5:00 p.m.
Room: 315.

This meeting will discuss applications for the Scholarly Editions grant program on the subject of History and Literature, submitted to the Division of Research Programs.

10. Date: March 21, 2013.
Time: 8:30 a.m. to 5:00 p.m.

Room: 421.

This meeting will discuss applications for the America's Media Makers Production grant program on the subjects of African American, Latino, and Native American History, submitted to the Division of Public Programs.

11. Date: March 26, 2013.

Time: 8:30 a.m. to 5:00 p.m.

Room: 315.

This meeting will discuss applications for the Collaborative Research grant program on the subject of the Americas, submitted to the Division of Research Programs.

12. Date: March 27, 2013.

Time: 8:30 a.m. to 5:00 p.m.

Room: 421.

This meeting will discuss applications for the America's Historical & Cultural Organizations Implementation grant program on the subject of Art, submitted to the Division of Public Programs.

13. Date: March 27, 2013.

Time: 8:30 a.m. to 5:00 p.m.

Room: 315.

This meeting will discuss applications for the Scholarly Editions grant program on the subject of Philosophy and Religion, submitted to the Division of Research Programs.

14. Date: March 28, 2013.

Time: 8:30 a.m. to 5:00 p.m.

Room: 415.

This meeting will discuss applications for the Sustaining Cultural Heritage Collections grant program, submitted to the Division of Preservation and Access.

15. Date: March 28, 2013.

Time: 8:30 a.m. to 5:00 p.m.

Room: 421.

This meeting will discuss applications for the America's Historical & Cultural Organizations Implementation grant program on the subject of U.S. History and the East, submitted to the Division of Public Programs.

16. Date: March 28, 2013.

Time: 8:30 a.m. to 5:00 p.m.

Room: 315.

This meeting will discuss applications for the Collaborative Research grant program on the subject of History and Literature, submitted to the Division of Research Programs.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5 U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated July 19, 1993.

Dated: February 11, 2013.

Lisette Voyatzis,

Committee Management Officer.

[FR Doc. 2013–03580 Filed 2–14–13; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Positive Train Control Public Forum

On Wednesday, February 27, 2013, the National Transportation Safety Board (NTSB) will convene a Forum titled, ''Positive Train Control: Is it on Track?'' The Forum will begin at 9:00 a.m. is open to all and the attendance is free (no registration required). The NTSB Chairman Deborah A.P. Hersman will serve as the presiding officer of the forum, and all five NTSB Board Members will serve as members of the Board of Inquiry. The forum is organized into three topics areas:

- PTC systems as envisioned versus what is being implemented
- Current status of PTC regulatory implementation
- Current status of PTC technical implementation

Over the past 40 years, the NTSB has investigated many train collisions and over-speed derailments caused by operational errors involving human performance failures. Many of these accidents occurred because train crews: did not comply with signal indications, did not follow operating procedures in nonsignaled (dark) territories, or did not comply with other specific operating rules such as returning track switches to normal position after completing work at railroad sidings.

The NTSB has repeatedly concluded that technological solutions, such as Positive Train Control (PTC), have great potential to reduce the number of serious train accidents by providing safety redundant systems to protect against human performance failures. Because of the NTSB's longstanding interest in this issue, the Board placed a recommendation to implement PTC on the NTSB's Most Wanted List of Transportation Safety Improvements at the inception of the list in 1990, and it remained on the list until after the Rail Safety Improvement Act of 2008 was enacted. This act requires each Class I railroad over which poison- or toxic-by-inhalation (PIH or TIH) hazardous materials are transported and each entity providing regularly scheduled intercity or commuter rail passenger transportation to implement a PTC system by December 31, 2015. The Federal Railroad Administration (FRA) finalized the rule requiring PTC in January 2010.

Legislation was proposed in Congress that would defer the Act's requirement for implementation of PTC systems. In the Senate, provisions in the Moving Ahead for Progress in the 21st Century Act (MAP-21) proposed a year-by-year evaluation of PTC system waivers by the Secretary of Transportation beyond the 2015 deadline but did not extend past December 31, 2018. In the House of Representatives, provisions in the American Energy and Infrastructure Jobs Act of 2012 proposed to extend the PTC system implementation deadline until December 31, 2020. Additionally, the House bill would have enabled a railroad to use an ''alternate risk-reduction strategy'' in lieu of installing PTC on some nonpassenger track where PIH and TIH are transported. However, the enacted legislation MAP–21, Public Law 112–141, did not include the provisions regarding PTC.

Expert panelists will include representatives from railroads, government, industry suppliers, labor unions, and the research community. Below is the preliminary agenda:

Wednesday, February 27, 2013

1. Opening Statement by the Presiding Officer of the forum
2. Introduction of the Officers and Technical Panel
3. Introduction of the forum participants
4. Introduction of the panels
5. Closing statement by Chairman Hersman

Panel Topics

Panel 1—Positive Train Control Systems as Envisioned vs. Implemented

Panel 2—Current Status of Positive Train Control (PTC) Regulatory Implementation

Panel 3—Current Status of Positive Train Control (PTC) Technical Implementation

The full agenda and a list of participants can be found at: *www.ntsb.gov/PTCforum.*

The forum will be held in the NTSB Board Room and Conference Center, located at 429 L'Enfant Plaza E. SW., Washington, DC. The public can view the forum in person or by live webcast at *www.ntsb.gov.* Webcast archives are generally available by the end of the next day following the forum, and Webcasts are archived for a period of 3 months from after the date of the event.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 or by email at *Rochelle.Hall@nts.gov* by Friday, February 22, 2013.

NTSB Media Contact: Eric Weiss—*eric.weiss@ntsb.gov*.

NTSB Forum Manager: Michael E. Hiller—*michael.hiller@ntsb.gov*.

NTSB Forum Coordinator: Jennifer Cheek—*jennifer.cheek@ntsb.gov*.

Dated: February 12, 2013.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2013–03604 Filed 2–14–13; 8:45 am]

BILLING CODE 7533–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing

On Tuesday, February 26, 2013 the National Transportation Safety Board (NTSB) will convene an Investigative Hearing to gather additional factual information for the ongoing investigation into the collision of Union Pacific intermodal train No. ZLAAH–22 with Union Pacific (UP) intermodal train No. AAMMLX–22 on June 24, 2012 near Goodwell, Oklahoma. The hearing will begin at 9:00 a.m., is open to all, and the attendance is free (no registration required). All five NTSB Board Members will serve as members of the Board of Inquiry. The NTSB Chairman Deborah A.P. Hersman will preside over the Investigative Hearing.

On June 24, 2012, about 10:01 a.m. central daylight time, eastbound UP freight train ZLAAH–22 and westbound UP freight train AAMMLX–22 collided head on while operating on straight track on UP's Pratt Subdivision near Goodwell, Oklahoma. As a result of the collision, both crewmembers on the eastbound train and one crewmember on the westbound train were fatally injured. The other crewmember on the westbound train jumped from the locomotive prior to the collision and survived with no major injuries. Fuel tanks from the derailed locomotives were ruptured, which created a diesel-fed fire. Damage was estimated at $14.79 million. Although this accident investigation is still ongoing, evidence points to the fact that this collision could have been prevented by a positive train control (PTC) system. Analysis of the accident, along with conclusions and a determination of probable cause, will become public at a later date after a final report on the investigation is completed, and reviewed and adopted by the NTSB Members.

The investigative hearing is being held to discuss UP's management of human error in its operations and system safety programs, and the status of PTC implementation on the UP. The goals of this hearing would be to promote and facilitate dialogue to better understand UP's safety management policies and programs associated with human error, operational accident and incident data collection, and the use such data to improve safety, and the current status of PTC implementation.

Parties to the hearing include the FRA, Union Pacific Railroad, United Transportation Union, and the Brotherhood of Locomotive Engineers & Trainmen.

Order of Proceedings

1. Opening Statement by the Chairman of the Board of Inquiry
2. Introduction of the Board of Inquiry and Technical Panel
3. Introduction of the Parties to the Hearing
4. Introduction of Exhibits by Hearing Officer
5. Overview of the accident, the investigation, and the Union Pacific railroad system by Investigator-In-Charge
6. Calling of Witnesses by Hearing Officer
7. Closing Statement by the Chairman of the Board of Inquiry

Additional information can be found on the web at: *http://www.ntsb.gov/news/events/2013/goodwell_ok/index.html*.

The accident docket is DCA12MR005.

The Investigative Hearing will be held in the NTSB Board Room and Conference Center, located at 429 L'Enfant Plaza E. SW., Washington, DC. The public can view the hearing in person or by live webcast at *www.ntsb.gov.* Webcast archives are generally available by the end of the next day following the forum, and Webcasts are archived for a period of 3 months from after the date of the event.

Individuals requesting specific accommodations should contact Ms. Rochelle Hall at (202) 314–6305 or by email at *Rochelle.Hall@ntsb.gov* by Friday, February 22, 2013.

NTSB Media Contact: Mr. Terry Williams—*williat@ntsb.gov*.

NTSB Investigative Hearing Officer: Mr. Michael E. *Hiller—michael.hiller@ntsb.gov*.

Dated: February 12, 2013.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2013–03605 Filed 2–14–13; 8:45 am]

BILLING CODE 7533–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2013–49; Order No. 1654]

International Mail Contract

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an additional Global Reseller Expedited Package Contract 1 Negotiated Service Agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* February 19, 2013.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

Background. On February 8, 2013, the Postal Service filed a notice pursuant to 39 CFR 3015.5 announcing that it has entered into an additional Global Reseller Expedited Package Contracts 1 negotiated service agreement (Agreement).[1] It seeks to have the Agreement included within the existing Global Reseller Expedited Package Contracts 1 product on grounds of functional equivalence to the baseline agreement filed in Docket No. CP2010–36.[2] *Id.* at 2–3.

II. Contents of Filings

Agreement. The Postal Service asserts that the Agreement is functionally equivalent to the baseline agreement approved in Docket No. CP2010–36. *Id.* at 2–3.

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Reseller Expedited Package Negotiated Service Agreement and Application For Non-Public Treatment of Materials Filed Under Seal, February 8, 2013 (Notice).

[2] *See also* Docket No. MC2010–21 (based on Governors' Decision No. 10–1), Order No. 445, April 22, 2010, Order Concerning Global Reseller Expedited Package Contracts Negotiated Service Agreement.

The Postal Service filed the following material in conjunction with its Notice, along with public (redacted) versions of supporting financial information:

- Attachment 1—a redacted copy of the Agreement;
- Attachment 2—a certified statement required by 39 CFR 3015.5(c)(2);
- Attachment 3—a redacted copy of Governors' Decision No. 10–1; and
- Attachment 4—an application for non-public treatment of materials filed under seal.

Functional equivalency. The Postal Service asserts that the Agreement is substantially similar to the baseline agreement filed in Docket No. CP2010–36 because it shares similar cost and market characteristics and meets criteria in Governors' Decision No. 10–1 concerning attributable costs. *Id.* at 3. The Postal Service further asserts that the functional terms of the Agreement and the baseline agreement are the same and the benefits are comparable. *Id.* at 3–4. It states that prices offered under the Agreement may differ due to postage commitments and when the Agreement is signed (due to updated costing information), but asserts that these differences do not alter the functional equivalency of the Agreement and the baseline agreement. *Id.* at 4. The Postal Service also identifies differences between the terms of the two agreements, but asserts that these differences do not affect the fundamental service being offered or the fundamental structure of the Agreement.[3] *Id.* at 4–7.

III. Notice of Proceeding

The Commission establishes Docket No. CP2013–49 for consideration of matters raised by the Postal Service's Notice. Interested persons may submit comments on whether the Agreement is consistent with the requirements of 39 CFR 3015.5 and the policies of 39 U.S.C. 3632 and 3633. Comments are due no later than February 19, 2013. The public portions of this filing can be accessed via the Commission's Web site, *http://www.prc.gov.* Information on how to obtain access to material filed under seal appears in 39 CFR 3007.50.

The Commission appoints Curtis E. Kidd to serve as Public Representative in the captioned proceeding.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2013–49 for consideration of matters raised by the Postal Service's Notice.

2. Comments by interested persons in this proceeding are due no later than February 19, 2013.

3. Pursuant to 39 U.S.C. 505, Curtis E. Kidd is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2013–03505 Filed 2–14–13; 8:45 am]

BILLING CODE 7710–FW–P

[3] Differences include a new "Whereas" paragraph, numerous revisions to existing Articles, and five new Articles. *Id.*

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68871; File No. SR–NYSEArca–2012–138]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change To List and Trade PIMCO Foreign Currency Strategy Exchange-Traded Fund Under NYSE Arca Equities Rule 8.600

February 8, 2013.

I. Introduction

On December 6, 2012, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares ("Shares") of the PIMCO Foreign Currency Strategy Exchange-Traded Fund ("Fund") under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on December 26, 2012.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares of the Fund pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by PIMCO ETF Trust ("Trust"), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[4] The investment manager to the Fund is Pacific Investment Management Company LLC ("PIMCO" or "Adviser"). PIMCO Investments LLC serves as the distributor for the Fund. State Street Bank & Trust Co. serves as the custodian and transfer agent for the Fund. The Exchange represents that the Adviser is affiliated with a broker-dealer and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.[5]

Principal Investment Strategies

The Fund will seek maximum total return,[6] consistent with prudent investment management. The Fund will invest under normal circumstances [7] at least 80% of its assets in currencies of, or Fixed Income Instruments [8]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68476 (December 19, 2012), 77 FR 76121 ("Notice").

[4] The Trust is registered under the Investment Company Act of 1940 ("1940 Act"). On October 28, 2011, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 ("Securities Act") and under the 1940 Act relating to the Fund (File Nos. 333–155395 and 811–22250) ("Registration Statement"). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 28993 (November 10, 2009) (File No. 812–13571).

[5] *See* Commentary .06 to NYSE Arca Equities Rule 8.600. The Exchange represents that in the event (a) the Adviser or any sub-adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio.

[6] The "total return" sought by the Fund will consist of income and capital appreciation, if any, which generally arises from decreases in interest rates, foreign currency appreciation, or improving credit fundamentals for a particular sector or security.

[7] The term "under normal circumstances" includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[8] "Fixed Income Instruments," as used generally in the Registration Statement, includes: debt securities issued or guaranteed by the U.S. Government, its agencies or government-sponsored enterprises ("U.S. Government Securities"); corporate debt securities of U.S. and non-U.S. issuers, including convertible securities and corporate commercial paper; mortgage-backed and other asset-backed securities; inflation-indexed bonds issued both by governments and corporations; structured notes, including hybrid or "indexed" securities and event-linked bonds; bank capital and trust preferred securities; loan participations and assignments; delayed funding

denominated in the currencies of, foreign (non-U.S.) countries, including, but not limited to, a combination of short-term Fixed Income Instruments, money market securities, and currency forwards [9] backed by high-quality, low duration securities (''80% Holdings'').[10] The Fund will seek exposure to foreign (non-U.S.) currencies likely to outperform the U.S. dollar over the long-term. Assets not invested in the 80% Holdings may be invested in other types of Fixed Income Instruments (*e.g.,* Fixed Income Instruments denominated in U.S. dollars).

The Fund may invest up to 50% of its total assets in securities and instruments that are economically tied to emerging market countries, which may include assets constituting the 80% Holdings.[11] PIMCO will select the Fund's country and currency composition based on its evaluation of relative interest rates, inflation rates, exchange rates, monetary and fiscal policies, trade and current account balances, legal and political developments, and other specific factors PIMCO believes to be relevant. The Fund will normally limit its exposure to a single non-U.S. currency (from currency holdings or investments in securities denominated in that currency) to 20% of its total assets.

The average portfolio duration of the Fund will vary based on PIMCO's forecast for interest rates and, under normal market conditions, will vary from zero to three years.[12] The Fund may invest in both high yield securities (''junk bonds'') rated Ba, or investment grade securities rated Baa or higher, by Moody's Investors Service, Inc. (''Moody's''), or equivalently rated by Standard & Poor's Ratings Services (''S&P'') or Fitch, Inc. (''Fitch''), or, if unrated, determined by PIMCO to be of comparable quality.[13] The Fund currently anticipates that at least 50% of issues of Fixed Income Instruments held by the Fund will be rated investment grade or determined by PIMCO to be of comparable quality.[14] The Fund is non-diversified, which means that it may invest its assets in a smaller number of issuers than a diversified fund.

While corporate debt securities and debt securities economically tied to an emerging market country generally must have $200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment for the Fund, at least 80% of issues of such securities held by the Fund must have $200 million or more par amount outstanding. The Fund may invest up to 10% of its assets in mortgage-backed securities or in other asset-backed securities, although this limitation does not apply to securities issued or guaranteed by Federal agencies or U.S. government sponsored instrumentalities.

The Fund may purchase or sell securities on a when-issued, delayed delivery, or forward commitment basis and may engage in short sales. The Fund may, without limitation, seek to obtain market exposure to the securities in which it primarily invests by entering into a series of purchase and sale contracts or by using other investment techniques (such as buy backs or dollar rolls).

Investment Selection Techniques

In selecting investments for the Fund, PIMCO will develop an outlook for interest rates, currency exchange rates, and the economy; analyze credit and call risks; and use other asset selection techniques. The proportion of the Fund's investments in securities with particular characteristics (such as quality, sector, interest rate, or maturity) will vary based on PIMCO's outlook for the U.S. economy and the economies of other countries in the world, the financial markets, and other factors. In seeking to identify undervalued currencies, PIMCO may consider many factors, including but not limited to longer-term analysis of relative interest rates, inflation rates, real exchange rates, purchasing power parity, trade account balances, and current account balances, as well as other factors that influence exchange rates such as flows, market technical trends, and government policies. With respect to fixed income investing, PIMCO will attempt to identify areas of the bond market that are undervalued relative to the rest of the market. PIMCO identifies these areas by grouping Fixed Income Instruments into sectors such as money markets, governments, corporates, mortgages, asset-backed, and international. Sophisticated proprietary software then will assist in evaluating sectors and pricing specific investments. Once investment opportunities are identified, PIMCO will shift assets among sectors depending upon changes in relative valuations, credit spreads, and other factors.

Additional Information Regarding Principal Investment Strategies [15]

The Fund will invest in currencies and Fixed Income Instruments that are

loans and revolving credit facilities; bank certificates of deposit, fixed time deposits and bankers' acceptances; repurchase agreements on Fixed Income Instruments and reverse repurchase agreements on Fixed Income Instruments; debt securities issued by states or local governments and their agencies, authorities and other government-sponsored enterprises; obligations of non-U.S. governments or their subdivisions, agencies and government-sponsored enterprises; and obligations of international agencies or supranational entities. Only those Fixed Income Instruments that are denominated in foreign (non-U.S.) currencies count towards the 80% Holdings (as defined above).

[9] A forward foreign currency exchange contract involves an obligation to purchase or sell a specific currency at a future date at a price set at the time of the contract.

[10] In connection with its holdings in Fixed Income Instruments, the Fund will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. PIMCO's Counterparty Risk Committee evaluates the creditworthiness of counterparties on an ongoing basis. In addition to information provided by credit agencies, PIMCO credit analysts evaluate each approved counterparty using various methods of analysis, including company visits, earnings updates, the broker-dealer's reputation, PIMCO's past experience with the broker-dealer, market levels for the counterparty's debt and equity, the counterparty's liquidity and its share of market participation.

[11] PIMCO generally considers an instrument to be economically tied to an emerging market country if the issuer or guarantor is a government of an emerging market country (or any political subdivision, agency, authority or instrumentality of such government), if the issuer or guarantor is organized under the laws of an emerging market country, or if the currency of settlement is a currency of an emerging market country. PIMCO has broad discretion to identify countries that it considers to qualify as emerging markets. In making investments in emerging market instruments, the Fund emphasizes those countries with relatively low gross national product per capita and with the potential for rapid economic growth. Emerging market countries are generally located in Asia, Africa, the Middle East, Latin America, and Eastern Europe.

[12] Duration is a measure used to determine the sensitivity of a security's price to changes in interest rates. The longer a security's duration, the more sensitive it will be to changes in interest rates.

[13] Securities rated Ba or lower by Moody's, or equivalently rated by S&P or Fitch, are sometimes referred to as ''high yield securities'' or ''junk bonds,'' while securities rated Baa or higher are referred to as ''investment grade.'' Unrated securities may be less liquid than comparably rated securities and involve the risk that the portfolio manager may not accurately evaluate the security's comparative credit rating. To the extent that the Fund invests in unrated securities, the Fund's success in achieving its investment objective may depend more heavily on the portfolio manager's creditworthiness analysis than if the Fund invested exclusively in rated securities. *See* note 14, *infra.*

[14] PIMCO utilizes sophisticated proprietary techniques in its creditworthiness analysis of unrated securities similar to the processes utilized by Moody's, S&P, and Fitch in their respective analyses of rated securities. For example, in making a ''comparable quality'' determination for an unrated security, PIMCO may evaluate the likelihood of payment by the obligor, the nature and provisions of the debt obligation, and the protection afforded by, and relative position of, the debt obligation in the event of bankruptcy, reorganization, or other arrangement under laws affecting creditors' rights. Upon consideration of these and other factors, PIMCO may determine that an unrated security is of comparable quality to rated securities in which the Fund may invest consistent with the Fund's credit quality guidelines described above.

[15] Many of the investment strategies of the Fund are discretionary, which means that PIMCO can

Continued

economically tied to foreign (non-U.S.) countries. PIMCO generally considers an instrument to be economically tied to a non-U.S. country if the issuer is a foreign government (or any political subdivision, agency, authority, or instrumentality of such government), or if the issuer is organized under the laws of a non-U.S. country. In the case of certain money market instruments, such instruments will be considered economically tied to a non-U.S. country if either the issuer or the guarantor of such money market instrument is organized under the laws of a non-U.S. country.

The Fund will invest in foreign currencies and may invest in Fixed Income Instruments denominated in foreign (non-U.S.) currencies or receive revenues in foreign currencies, and may engage in foreign currency transactions on a spot (cash) basis and enter into forward foreign currency exchange contracts.[16] A forward foreign currency exchange contract, which involves an obligation to purchase or sell a specific currency at a future date at a price set at the time of the contract, reduces the Fund's exposure to changes in the value of the currency it will deliver and increases its exposure to changes in the value of the currency it will receive for the duration of the contract. Certain foreign currency transactions may also be settled in cash rather than the actual delivery of the relevant currency. The effect on the value of the Fund is similar to selling securities denominated in one currency and purchasing securities denominated in another currency. A contract to sell foreign currency would limit any potential gain which might be realized if the value of the hedged currency increases. The Fund may enter into these contracts to hedge against foreign exchange risk, to increase exposure to a foreign currency, or to shift exposure to foreign currency fluctuations from one currency to another. Suitable hedging transactions may not be available in all circumstances and there can be no assurance that the Fund will engage in such transactions at any given time or from time to time.

The Fund may invest in variable and floating rate debt securities, which are securities that pay interest at rates that adjust whenever a specified interest rate changes or that reset on predetermined dates (such as the last day of a month or calendar quarter). To the extent the Fund invests in variable and floating rate debt securities that are deemed illiquid, the Fund will limit such holdings to an amount consistent with the 15% limitation on illiquid securities discussed below. The Fund may invest in floating rate debt instruments (''floaters'') and engage in credit spread trades. Variable and floating rate securities generally are less sensitive to interest rate changes, but may decline in value if their interest rates do not rise as much, or as quickly, as interest rates in general. Conversely, floating rate securities will not generally increase in value if interest rates decline.

The Fund may invest in bank capital securities. Bank capital securities are issued by banks to help fulfill their regulatory capital requirements. There are two common types of bank capital: Tier I and Tier II. Bank capital is generally, but not always, of investment grade quality. Tier I securities are typically exchange-traded and often take the form of trust preferred securities. Tier II securities are commonly thought of as hybrids of debt and preferred stock. Tier II securities are typically traded over-the-counter, are often perpetual (with no maturity date), are callable, and have a cumulative interest deferral feature. This means that under certain conditions, the issuer bank can withhold payment of interest until a later date. However, such deferred interest payments generally earn interest.

The Fund may make short sales as part of its overall portfolio management strategies or to offset a potential decline in value of a security.

Other Portfolio Holdings and Non-Principal Investment Strategies

For the purpose of achieving income, the Fund may lend its portfolio securities to brokers, dealers, and other financial institutions, provided that a number of conditions are satisfied, including that the loan is fully collateralized. When the Fund lends portfolio securities, its investment performance will continue to reflect changes in the value of the securities loaned, and the Fund will also receive a fee or interest on the collateral. Cash collateral received by the Fund in securities lending transactions may be invested in short-term liquid Fixed Income Instruments or in money market or short-term mutual funds or similar investment vehicles, including affiliated money market or short-term mutual funds.

The Fund may invest in, to the extent permitted by Section 12(d)(1)(A) of the 1940 Act, other affiliated and unaffiliated funds, such as open-end or closed-end management investment companies, including other exchange traded funds, provided that the Fund's investment in units or shares of investment companies and other open-end collective investment vehicles will not exceed 10% of the Fund's total assets. The Fund may invest in securities lending collateral in one or more money market funds to the extent permitted by Rule 12d1–1 under the 1940 Act, including series of PIMCO Funds, an affiliated open-end management investment company managed by PIMCO.

Subject to the restrictions and limitations of the 1940 Act, the Fund may elect to pursue its investment objective either by investing directly in securities or instruments, or by investing in one or more underlying investment vehicles or companies that have substantially similar investment objectives and policies as the Fund.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment). Certain financial instruments, including, but not limited to, Rule 144A securities, loan participations and assignments, delayed funding loans, revolving credit facilities,[17] and fixed- and floating-rate loans[18] will be included in the 15% limitation on illiquid securities. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and the Fund will consider taking appropriate steps in order to maintain adequate

decide from time to time whether to use them or not.

[16] The Fund will limit its investments in currencies to those currencies with a minimum average daily foreign exchange turnover of USD $1 billion, as determined by the Bank for International Settlements (''BIS'') Triennial Central Bank Survey. As of the most recent BIS Triennial Central Bank Survey, at least 52 separate currencies had minimum average daily foreign exchange turnover of USD $1 billion. For a list of eligible BIS currencies, see *www.bis.org.*

[17] The Fund may enter into, or acquire participations in, delayed funding loans and revolving credit facilities, in which a lender agrees to make loans up to a maximum amount upon demand by the borrower during a specified term. These commitments may have the effect of requiring the Fund to increase its investments in a company at a time when it might not otherwise decide to do so (including at a time when the company's financial condition makes it unlikely that such amounts will be repaid). To the extent that the Fund is committed to advance additional funds, it will segregate or ''earmark'' assets determined to be liquid by PIMCO in accordance with procedures established by the Fund's Board of Trustees in an amount sufficient to meet such commitments.

[18] The Fund may invest in fixed- and floating-rate loans, which investments generally will be in the form of loan participations and assignments of portions of such loans. Participations and assignments involve special types of risk, including credit risk, interest rate risk, liquidity risk, and the risks of being a lender.

liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund intends to qualify annually and elect to be treated as a regulated investment company under Subchapter M of the Internal Revenue Code. The Fund may not concentrate its investments in a particular industry, as that term is used in the 1940 Act, and as interpreted, modified, or otherwise permitted by regulatory authority having jurisdiction from time to time.

If PIMCO believes that economic or market conditions are unfavorable to investors, PIMCO may temporarily invest up to 100% of the Fund's assets in certain defensive strategies, including holding a substantial portion of the Fund's assets in cash, cash equivalents, or other highly rated short-term securities, including securities issued or guaranteed by the U.S. government, its agencies, or instrumentalities.

The Fund will not invest in any non-U.S registered equity securities, except if such securities are traded on exchanges that are members of the Intermarket Surveillance Group (''ISG'').

The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2X and 3X) of the Fund's broad-based securities market index (as defined in Form N–1A).[19]

The Fund will not invest in options contracts, futures contracts, or swap agreements, in accordance with the Trust's Exemptive Order.

Additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions, and taxes is included in the Notice and Registration Statement.[20]

[19] The Exchange represents that the Fund's broad-based securities market index will be identified in a future amendment to the Registration Statement following the Fund's first full calendar year of performance.

[20] *See supra,* notes 3 and 4, respectively.

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act[21] and the rules and regulations thereunder applicable to a national securities exchange.[22] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[23] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[24] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the Portfolio Indicative Value (''PIV''), as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session.[25] On each business day before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio,[26] as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Fund's calculation of the net asset value (''NAV'') at the end of the business day.[27] The NAV of the Fund's Shares will be calculated once daily Monday through Friday as of the close of trading on the New York Stock Exchange (generally, 4:00 p.m. Eastern Time). In addition, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. The Trust's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Price information for the debt securities and other financial instruments held by the Fund will be available through major market data vendors. Further, a basket composition file, which includes the security names and share quantities, if applicable, required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange via the National Securities Clearing Corporation. The basket represents one ''Creation Unit'' of the Fund.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[28] In addition, the Exchange will halt trading in the Shares under the specific

[21] 15 U.S.C. 78f.

[22] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[25] According to the Exchange, several major market data vendors display or make widely available PIVs taken from CTA or other data feeds.

[26] On a daily basis, the Adviser will disclose for each portfolio security or other financial instrument of the Fund the following information: ticker symbol (if applicable), name of security and financial instrument, number of shares or dollar value of securities and financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The Web site information will be publicly available at no charge.

[27] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day. The Web site information will be publicly available at no charge.

[28] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

circumstances set forth in NYSE Arca Equities Rule 8.600(d)(2)(D), and may halt trading in the Shares if trading is not occurring in the securities or the financial instruments constituting the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[29] The Exchange will consider the suspension of trading in or removal from listing of the Shares if the PIV is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time.[30] The Exchange represents that the Adviser is affiliated with a broker-dealer and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.[31] The Commission notes that the Adviser's personnel who make decisions on the Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund's portfolio.[32] Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[33] The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Commission also notes that the Fund will not invest in any non-U.S.-registered equity securities, except if such securities are traded on exchanges that are members of the ISG, and the Exchange would be able to obtain surveillance information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

The Exchange further represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Act,[34] as provided by NYSE Arca Equities Rule 5.3.

(6) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment). Certain financial instruments, including, but not limited to, Rule 144A securities, loan participations and assignments, delayed funding loans, revolving credit facilities, and fixed- and floating-rate loans will be included in the 15% limitation on illiquid securities.

(7) The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

(8) The Fund will normally limit its exposure to a single non-U.S. currency (from currency holdings or investments in securities denominated in that currency) to 20% of its total assets. The Fund currently anticipates that at least 50% of issues of Fixed Income Instruments held by the Fund will be rated investment grade or determined by PIMCO to be of comparable quality. In addition, while corporate debt securities and debt securities economically tied to an emerging market country generally must have $200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment for the Fund, at least 80% of issues of such securities held by the Fund must have $200 million or more par amount outstanding.

(9) The Fund will not invest in any non-U.S.-registered equity securities, except if such securities are traded on exchanges that are members of the ISG. The Exchange would be able to obtain surveillance information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

(10) The Fund will not invest in options contracts, futures contracts, or swap agreements, in accordance with the Trust's Exemptive Order.

(11) A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on the Exchange's representations and description of the Fund, including those set forth above and in the Notice.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[35] and the rules and

[29] With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

[30] *See* NYSE Arca Equities Rule 8.600(d)(2)(C)(ii).

[31] *See supra* note 5 and accompanying text. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[32] *See* Commentary .06 to NYSE Arca Equities Rule 8.600.

[33] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[34] *See* 17 CFR 240.10A–3.

[35] 15 U.S.C. 78f(b)(5).

regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[36] that the proposed rule change (SR–NYSEArca–2012–138) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03490 Filed 2–14–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68901; File No. SR–CBOE–2013–018]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fees Schedule

February 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 2013, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend the Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Fee Schedule. Specifically, the Exchange is proposing to increase the threshold in which it waives customer transaction fees, implement a $0.25 marketing fee for trading in SPY and QQQ options, and eliminate the complex order surcharge.

First, the Exchange is proposing to increase the threshold at which the Exchange waives the customer transaction fee in ''ETF, ETN and HOLDRs Options.'' Currently, the Exchange waives transaction fees for customer orders of 99 contracts or less in transactions in ETFs, ETNs, and HOLDRs options. Any order that is 100 contracts or more is charged a fee of $0.18. The Exchange is proposing to increase this threshold and waive transaction fees for customer orders of 249 contracts or less in these options. The Exchange will charge any leg of a complex orders in these options that exceeds 249 even if the leg is only partially executed below the 249 threshold. For orders 250 contracts and above, the Exchange will continue to charge a fee of $0.18. Corresponding edits will also be made to Footnote 9 in the Fees Schedule to reflect the change. Raising the threshold for which the Exchange will waive transaction fees will allow customers who engage in ETF, ETN and HOLDRs options trading the opportunity to pay lower fees for larger transactions and provide greater incentives for such trading. In addition, increasing this threshold will encourage more interaction with Exchange customers and encourage the direction of customer ETF, ETN and HOLDRs options orders to the Exchange.

Next, the Exchange is proposing to implement a $0.25 marketing fee for electronic trading in SPY and QQQ options. Currently, the Marketing Fee assessed on all Penny Pilot Exchange-Traded Fund (''ETF'') options is $0.25 per contract, with the exception of SPY and QQQ. The Exchange only charges a $0.25 fee per contract in SPY and QQQ options for qualifying complex orders that trade via the Exchange Complex Order Book against individual leg markets. The Exchange is proposing to amend the Fees Schedule to assess this $0.25 fee per contract on all qualifying orders whether simple or complex. This change will place SPY and QQQ on the same footing regarding the Marketing Fee as other options in the Penny Pilot classes. Other exchanges assess their marketing fees on SPY and QQQ.[3] To correspond with this proposed change, the Exchange also proposes to eliminate the ''Notes'' section of the ''Marketing Fee'' table of the Fees Schedule to reflect this change.[4]

Finally, the Exchange is proposing to eliminate the surcharge on complex orders. Currently, the Exchange has a $0.10 surcharge per contract for the electronic execution leg of a complex order in multiply-listed options that executes against a customer complex order. This surcharge is in addition to the other transaction fees. The Exchange is proposing to eliminate this surcharge. Eliminating the surcharge for complex orders will allow Trading Permit Holders (''TPHs'') who engage in complex order trading the opportunity to pay lower fees for such transactions and provide greater incentives for such trading. In addition, eliminating the $0.10 surcharge will encourage more interaction with Exchange customers.

Thus, the proposed changes are designed to attract greater order flow to the Exchange. This would bring greater liquidity to the market, which benefits all market participants. The propose changes are to take effect on February 1, 2013

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the

[36] 15 U.S.C. 78s(b)(2).

[37] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Section II, ''Payment for Order Flow Fees,'' of the Nasdaq OMX PHLX (''Phlx'') Fee Schedule.

[4] The ''Notes'' section of the ''Marketing Fee'' table reads ''The marketing fee will not be assessed on electronic transactions in SPY and QQQ, except for electronic transactions resulting from AIM and complex orders that trade in either COA or COB (excluding complex orders that trade against the leg markets, on which the marketing fee will not be assessed). The marketing fee will continue to be assessed on open outcry transactions in SPY and QQQ.'' Because the Exchange proposes to assess the Marketing Fee to SPY and QQQ in the same manner as it applies to other Penny Pilot classes the SPY- and QQQ-specific specifications set out in the ''Notes'' section are no longer relevant and can be deleted.

''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[6] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

In particular, the proposed change to increase the threshold at which the Exchange waives the transaction fee for customer orders is reasonable because it will allow customers who engage in such trading to trade larger orders without any electronic transaction fee. It is equitable and not unfairly discriminatory because, while customers are assessed different, and often lower, fee rates than other market participants, this is a common practice within the options marketplace, and customers often do not have the sophisticated trading algorithms and systems that other market participants often possess. Further, to the extent that any change in intramarket competition may result from the proposed change to the threshold for waiving options customer transaction fees, such possible change is justifiable and offset because the changes to such fees are designed to attract greater customer order flow to the Exchange. This would bring greater liquidity to the market, which benefits all market participants. Further, the proposed change will be applied to all customers equally.

Next, the proposed change to assess a $0.25 marketing fee for all SPY and QQQ options contracts is reasonable because it puts trading in SPY and QQQ options on the same footing regarding the Marketing Fee as other options in the Penny Pilot Classes. It is equitable and not unfairly discriminatory because it is applied to all TPHs equally and puts TPHs trading SPY and QQQ on the same footing, with regards to the Marketing Fee, as other Penny Pilot classes. Moreover, other exchanges assess their marketing fees on SPY and QQQ transactions.[7]

Finally, the proposed change to eliminate the complex order surcharge is reasonable because it will allow TPHs who engage in complex order trading the opportunity to pay lower fees for such transactions. It is equitable and not unfairly discriminatory because it is applied to all TPHs equally and will no longer place non-customer market participants on a different footing, with regards to the complex order surcharge, from customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed changes to increase the threshold for waiving the electronic customer transaction fee will cause any unnecessary burden on intramarket competition because, while customers are assessed different, and often lower, fee rates than other market participants, this is a common practice within the options marketplace, and customers often do not have the sophisticated trading algorithms and systems that other market participants often possess. Further, to the extent that any change in intramarket competition may result from the proposed change to the threshold for waiving options customer transaction fees, such possible change is justifiable and offset because the changes to such fees are designed to attract greater customer order flow to the Exchange. This would bring greater liquidity to the market, which benefits all market participants. The Exchange does not believe that the proposed change will cause any unnecessary burden on intermarket competition because the changes are minimal. Further, to the extent that this change makes trading on CBOE more attractive to customers or other market participants on other exchanges, they can always elect to send orders to CBOE.

The Exchange does not believe the proposed changes to assess a $0.25 fee in SPY and QQQ options will cause any unnecessary burden on intramarket competition because it merely puts these options classes on the same footing regarding the Marketing Fee as other options in the Penny Pilot Classes and will be assessed to the same market participants as other classes to which the Marketing Fee is assessed. The Exchange does not believe that the proposed change will cause any unnecessary burden on intermarket competition because the fee is similar to fees assessed at other exchanges assess their marketing fees on these classes.[8]

Finally, the Exchange does not believe the proposed changes to eliminate the complex order surcharge will cause any unnecessary burden on intramarket competition because the change is minimal and applies to a specific set of orders. Further, it puts non-customer market participants on the same footing, with regards to the complex order surcharge, as customers. Moreover, to the extent that any change in intramarket competition may result from the proposed change, such possible change is justifiable and offset because the changes to such fees are designed to attract greater customer order flow to the Exchange. This would bring greater liquidity to the market, which benefits all market participants. The Exchange does not believe that the proposed change will cause any unnecessary burden on intermarket competition because the changes are very minimal and specific to certain order types. Further, to the extent that this change makes trading on CBOE more attractive to market participants on other exchanges, they can always elect to send orders to CBOE.

The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule changes reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange, and the Exchange believes that such structure will help the Exchange remain competitive with those fees and rebates assessed by other venues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and paragraph (f) of Rule 19b–4[10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] *See* Section II, ''Payment for Order Flow Fees,'' of the Phlx Fee Schedule.

[8] *See* Section II, ''Payment for Order Flow Fees,'' of the Phlx Fee Schedule.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2013–018 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2013–018. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at CBOE's principal office. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2013–018, and should be submitted on or before March 8, 2013

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03570 Filed 2–14–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68870; File No. SR–NYSEArca–2012–139]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change To List and Trade First Trust Preferred Securities and Income ETF Under NYSE Arca Equities Rule 8.600

February 8, 2013.

I. Introduction

On December 6, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the First Trust Preferred Securities and Income ETF (''Fund'') under NYSE Arca Equities Rule 8.600. The proposed rule change was published in the **Federal Register** on December 26, 2012.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares of the Fund pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by First Trust Exchange-Traded Fund III (''Trust''), which is organized as a Massachusetts business trust and is registered with the Commission as an open-end management investment company.[4] The investment adviser to the Fund is First Trust Advisors L.P. (''Adviser''). Stonebridge Advisors LLC will serve as investment sub-adviser to the Fund (''Sub-Adviser'') and will provide day-to-day portfolio management of the Fund. First Trust Portfolios L.P. (''Distributor'') will be the principal underwriter and distributor of the Fund's Shares. Brown Brothers Harriman & Co. will serve as administrator, custodian, and transfer agent for the Fund. The Exchange states that each of the Adviser and Sub-Adviser is affiliated with a broker-dealer and represents that each such Adviser and Sub-Adviser has implemented a fire wall with respect to its respective broker-dealer affiliate regarding access to information concerning the composition of and changes to the Fund's portfolio.[5]

Description of the Fund

The Fund's objective will be to provide current income and total return. Under normal market conditions,[6] the Fund will invest at least 80% of its net assets (including investment borrowings) in preferred securities (''Preferred Securities'') and income-producing debt securities (''Income Securities'').[7] The Adviser represents

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68458 (December 18, 2012), 77 FR 76148 (''Notice'').

[4] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). On September 23, 2011, the Trust filed with the Commission a registration statement on Form N–1A under the Securities Act of 1933 and under the 1940 Act relating to the Fund (File Nos. 333–176976 and 811–22245) (''Registration Statement''). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812–13795) (''Exemptive Order'').

[5] *See* Commentary .06 to NYSE Arca Equities Rule 8.600. The Exchange represents that, in the event (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio.

[6] The term ''under normal market conditions'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[7] The Exchange states that the risks and potential rewards of investing in the Fund may at times be similar to the risks and potential rewards of investing in both equity funds and bond funds. Certain of the Preferred Securities in which the Fund will invest will be traditional preferred stocks that issue dividends that qualify for the dividend received deduction under which ''qualified'' domestic corporations are able to exclude a percentage of the dividends received from their taxable income. Certain of the Preferred Securities in which the Fund will invest will be preferred stock that does not issue dividends that qualify for the dividends received deduction for eligible investors (''non-DRD preferred stock'') that do not qualify for the dividends received deduction or issue qualified dividend income. As described in the Registration Statement, hybrid preferred securities, another type of Preferred Securities, are typically junior and fully subordinated liabilities of

Continued

that initially at least 50% of the Fund's net assets invested in Preferred Securities and 50% of the Income Securities held by the Fund will be exchange-listed.[8] However, the Fund reserves the right to reduce the percentage of assets that are exchange-listed. Preferred Securities held by the Fund generally pay fixed or adjustable-rate distributions to investors and have preference over common stock in the payment of distributions and the liquidation of a company's assets, but are generally junior to all forms of the company's debt, including both senior and subordinated debt. For purposes of the 80% test set forth above, Income Securities consist of both foreign and domestic debt instruments, including corporate bonds, high yield bonds, convertible securities, and contingent convertible capital securities. In addition, for purposes of the 80% test set forth above, securities of other open-end funds, closed-end funds, or exchange-traded funds (''ETFs'') registered under the 1940 Act [9] that invest primarily in Preferred Securities or Income Securities will be deemed to be Preferred Securities or Income Securities, respectively. The Adviser represents that at least 80% of the Preferred Securities and Income Securities held by the Fund will have a minimum original principal amount outstanding of $100 million or more. In addition, the Fund's portfolio will comprise a minimum of 13 non-affiliated issuers.

As stated above, the Fund may invest in a variety of debt securities, including corporate debt securities.[10] The broad category of corporate debt securities includes debt issued by U.S. and non-U.S. companies of all kinds, including those with small-, mid-, and large-capitalizations.[11] Corporate debt may carry fixed or floating rates of interest.

Initially, the Fund will invest at least 80% of the Fund's net assets in Income Securities of issuing firms (''issuers'') that have a long-term issuer credit rating of investment grade at the time of the investment. However, the Fund reserves the right to reduce the percentage of assets invested in investment grade issuers. ''Investment grade'' is defined as those issuers that have a long-term credit rating of ''BBB−'' or higher by Standard & Poor's Rating Group, a division of McGraw Hill Companies, Inc. (''S&P''); ''Baa3'' or higher by Moody's Investors Service, Inc. (''Moody's''); or a comparable rating by another nationally recognized statistical rating organization (''NRSRO''). The Fund may also invest in securities that are unrated by an NRSRO if such securities are of comparable credit quality. Comparable credit quality of securities that are unrated by an NRSRO will be determined by the Sub-Adviser based on fundamental credit analysis of the unrated issuer and comparable NRSRO-rated peer issuers of the same industry sector. On a best efforts basis, the Sub-Adviser will attempt to make a rating determination based on publicly available data. Factors taken into consideration in determining the comparable credit quality of the unrated issuer will be company leverage, capital structure, liquidity, funding, sustainability of cash flows, earnings quality, market position, and asset quality. In the event that a security is rated by multiple NRSROs and receives divergent ratings, the Fund will treat the issuer as being rated in the highest rating category received from an NRSRO.

Initially, the Fund may invest up to 20% of the Fund's net assets in Income Securities issued by below-investment-grade issuers if such securities have acceptable credit quality and attractive relative value. However, the Fund reserves the right to increase the percentage of assets invested in below-investment-grade securities. ''Below investment grade'' is defined as those issuers that have a long-term credit rating of ''BBB − or lower by ''S&P,'' ''Baa3'' or lower by Moody's, or a comparable rating by another NRSRO. The Fund may also invest in securities that are unrated by an NRSRO if such securities are of comparable credit quality as determined by the Sub-Adviser.

The Fund intends to invest at least 25% of its assets in securities of financial companies. Financial companies include, but are not limited to, companies involved in activities such as banking, mortgage finance, consumer finance, specialized finance, investment banking and brokerage, asset management and custody, corporate lending, insurance and financial investment, and real estate, including but not limited to real estate investment trusts.

Other Investments of the Fund

While the Fund, under normal market conditions, will invest at least 80% of its net assets (including investment borrowings) in Preferred Securities and Income Securities, the Fund also may invest the remainder of its assets in other investments, as described below.

Normally, the Fund may invest up to 15% of its net assets in securities with maturities of less than one year or cash equivalents, or it may hold cash. The percentage of the Fund invested in such holdings will vary and depend on several factors, including market conditions. For temporary defensive purposes and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies and invest part or all of its assets in these securities or it may hold cash. During such periods, the Fund may not be able to achieve its investment objective. The Fund may adopt a defensive strategy when the Sub-Adviser or the Adviser believes securities in which the Fund normally invests have elevated risks due to political or economic factors and in other extraordinary circumstances.

The Fund may also invest in U.S. government securities [12] or short-term

an issuer or the beneficiary of a guarantee that is junior and fully subordinated to the other liabilities of the guarantor.

[8] The foreign equity securities, including preferred, hybrid-preferred, and contingent convertible capital, securities in which the Fund may invest will be limited to securities that trade in markets that are members of the Intermarket Surveillance Group (''ISG''), which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange.

[9] For purposes of this filing, ETFs, which will be listed on a national securities exchange, include the following: Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The Fund may invest in the securities of ETFs in excess of the limits imposed under the 1940 Act pursuant to exemptive orders obtained by certain ETFs and their sponsors from the Commission. The Exchange states that the Fund will not invest in leveraged, inverse, or leveraged inverse ETFs.

[10] As described in the Registration Statement, corporate debt securities are fixed-income securities issued by businesses to finance their operations. Notes, bonds, debentures, and commercial paper are the most common types of corporate debt securities, with the primary difference being their maturities and secured or unsecured status. Certain debt securities held by the Fund may include debt instruments that are similar in many respects to preferred securities.

[11] Under normal market conditions, at least 80% of the Fund's investments in U.S. corporate bonds must have $100 million or more par amount outstanding to be considered as an eligible investment and a non-U.S. corporate bond must have $200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment. Economic and other conditions may, from time to time, lead to a decrease in the average par amount outstanding of bond issuances.

[12] U.S. government securities include U.S. Treasury obligations and securities issued or guaranteed by various agencies of the U.S. government, or by various instrumentalities which have been established or sponsored by the U.S. government. U.S. treasury obligations are backed by the ''full faith and credit'' of the U.S. government. Securities issued or guaranteed by federal agencies and U.S. government sponsored instrumentalities may or may not be backed by the full faith and credit of the U.S. government.

debt securities to keep cash on hand fully invested or for temporary defensive purposes. The use of temporary investments is not a part of the principal investment strategy of the Fund. Short-term debt securities are securities from issuers having a long-term debt rating of at least A by S&P, Moody's, or Fitch, Inc. and having a maturity of one year or less. Short-term debt securities are defined to include, without limitation, the following:

(1) U.S. government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. treasury or by U.S. government agencies or instrumentalities.

(2) Certificates of deposit issued against funds deposited in a bank or savings and loan association. Such certificates are for a definite period of time, earn a specified rate of return, and are normally negotiable. If such certificates of deposit are non-negotiable, they will be considered illiquid securities and be subject to the Fund's 15% restriction on investments in illiquid securities.

(3) Bankers' acceptances, which are short-term credit instruments used to finance commercial transactions.

(4) Repurchase agreements, which involve purchases of debt securities. In such an action, at the time the Fund purchases the security, it simultaneously agrees to resell and redeliver the security to the seller, who also simultaneously agrees to buy back the security at a fixed price and time.

(5) Bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest.

(6) Commercial paper, which are short-term unsecured promissory notes, including variable rate master demand notes issued by corporations to finance their current operations. Master demand notes are direct lending arrangements between the Fund and a corporation. There is no secondary market for the notes, and they will be considered illiquid securities and be subject to the Fund's 15% restriction on investments in illiquid securities. However, they are redeemable by the Fund at any time. The Fund's Sub-Adviser will consider the financial condition of the corporation (*e.g.,* earning power, cash flow, and other liquidity ratios) and will continuously monitor the corporation's ability to meet all of its financial obligations, because the Fund's liquidity might be impaired if the corporation were unable to pay principal and interest on demand. The Fund may only invest in commercial paper rated A–2 or higher by S&P, Prime-2 or higher by Moody's, or F2 or higher by Fitch, Inc.

The Fund may also invest in senior loans, second lien loans, loan participations, payment-in-kind securities, zero coupon bonds, bank certificates of deposit, fixed-time deposits, bankers' acceptances, U.S. government securities, or fixed income securities issued by non-U.S. governments denominated in U.S. dollars.

The Fund may invest in warrants. Warrants acquired by the Fund entitle it to buy common stock from the issuer at a specified price and time. They do not represent ownership of the securities but only the right to buy them. Warrants are subject to the same market risks as stocks, but may be more volatile in price. The Fund's investment in warrants will not entitle it to receive dividends or exercise voting rights and will become worthless if the warrants cannot be profitably exercised before their expiration date.

The Fund may invest in other pooled investment vehicles and business development companies that are exchange listed and that invest primarily in securities of the types in which the Fund may invest directly.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including (1) non-negotiable certificates of deposit and master demand notes, (2) Rule 144A securities, and (3) senior loans, second lien loans, and loan participation interests. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund will be classified as ''non-diversified'' under the 1940 Act and as a result may invest a relatively high percentage of its assets in a limited number of issuers. The Fund will only be limited as to the percentage of its assets which may be invested in the securities of any one issuer by the diversification requirements imposed by the Internal Revenue Code of 1986, as amended (''Code''). Other than financial companies, the Fund may not invest 25% or more of the value of its total assets in securities of issuers in any one industry or group of industries. This restriction does not apply to obligations issued or guaranteed by the U.S. government, its agencies, or instrumentalities. In addition, the Fund intends to qualify annually and to elect to be treated as a regulated investment company under the Code.

Consistent with the Exemptive Order, the Fund will not invest in options contracts, futures contracts, or swap agreements. The Fund will not take short positions in securities. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

The Exchange represents that that the Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange further represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Act,[13] as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value (''NAV'') per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes, among other things, is included in the Notice and Registration Statement.[14]

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act[15] and the rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[17] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove

[13] 17 CFR 240.10A–3.

[14] *See* Notice and Registration Statement, *supra* notes 3 and 4, respectively.

[15] 15 U.S.C. 78f.

[16] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[18] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, information regarding the intra-day value of the Shares (''indicative optimized portfolio value'' or ''IOPV''), which is the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[19] On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Fund's calculation of NAV at the end of the business day.[20] The Fund's NAV will be determined as of the close of trading (normally 4:00 p.m., Eastern Time) on each day the New York Stock Exchange (''NYSE'') is open for business.[21] A basket composition file, which includes the security names and share quantities required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via the National Securities Clearing Corporation. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. The intra-day, closing, and settlement prices of the portfolio securities and other instruments also will be readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. The Fund's Web site will also include a form of the prospectus for the Fund, information relating to NAV (updated daily), and other quantitative and trading information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[22] In addition, the Exchange will halt trading in the Shares under the specific circumstances set forth in NYSE Arca Equities Rule 8.600(d)(2)(D) and may halt trading in the Shares if trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[23] Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[24] The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Moreover, the Exchange states that the Adviser and Sub-Adviser are each affiliated with a broker-dealer, and represents that each such Adviser and Sub-Adviser has implemented a fire wall with respect to its respective broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio.[25] The Exchange further represents that it is able to obtain information via the ISG from other exchanges that are ISG members, including all U.S. national securities exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement.[26]

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of

[18] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[19] According to the Exchange, several major market data vendors display and/or make widely available IOPVs published on the CTA or other data feeds.

[20] On a daily basis, the Adviser will disclose for each portfolio security or other financial instrument of the Fund the following information: Ticker symbol (if applicable); name of security and financial instrument; number of shares or dollar value of securities and financial instruments held in the portfolio; and percentage weighting of the security and financial instrument in the portfolio.

[21] The Exchange states that the price of a non-U.S. security that is primarily traded on a non-U.S. exchange shall be updated, using the last sale price, every 15 seconds throughout the trading day, provided, that upon the closing of such non-U.S. exchange, the closing price of the security, after being converted to U.S. dollars, will be used. Furthermore, in calculating the IOPV of the Fund's Shares, exchange rates may be used throughout the day (9:00 a.m. to 4:15 p.m., Eastern Time) that may differ from those used to calculate the NAV per Share of the Fund and consequently may result in differences between the NAV and the IOPV.

[22] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

[23] *See* NYSE Arca Equities Rules 8.600(d)(2)(C) and 8.600(d)(2)(D). With respect to trading halts, the Exchange may consider other relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

[24] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[25] *See supra* note 5 and accompanying text. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[26] As noted above, the foreign equity securities, including preferred, hybrid-preferred, and contingent convertible capital, securities in which the Fund may invest will be limited to securities that trade in markets that are members of ISG, which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange. *See supra* note 8. In addition, ETFs in which the Fund may invest will be listed on a national securities exchange. *See supra* note 9.

equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures applicable to derivative products, which include Managed Fund Shares, are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IOPV will not be calculated or publicly disseminated; (d) how information regarding the IOPV is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Act,[27] as provided by NYSE Arca Equities Rule 5.3.

(6) Initially, at least 50% of the Fund's net assets invested in Preferred Securities and Income Securities will be exchange-listed.[28] In addition, at least 80% of the Preferred Securities and Income Securities held by the Fund will have a minimum original principal amount outstanding of $100 million or more. Specifically with respect to corporate bonds, under normal market conditions, at least 80% of the Fund's investments in U.S. corporate bonds must have $100 million or more par amount outstanding to be considered as an eligible investment, and a non-U.S. corporate bond must have $200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment. Further, the Fund's portfolio will comprise a minimum of 13 non-affiliated issuers.

(7) The Fund will invest at least 80% of its net assets in Income Securities of issuing firms having a long-term issuer credit rating of investment grade at the time of investment.

(8) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities, including non-negotiable certificates of deposit and master demand notes; Rule 144A securities; and senior loans, second lien loans, and loan participation interests.

(9) The Fund will not: (a) Take short positions in securities; and (b) pursuant to the terms of the Exemptive Order, invest in options contracts, futures contracts, or swap agreements. In addition, the Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

(10) A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations and description of the Fund, including those set forth above and in the Notice.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[29] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (SR–NYSEArca–2012–139) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03489 Filed 2–14–13; 8:45 am]

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[27] *See* 17 CFR 240.10A–3.

[28] *See supra* note 26 and accompanying text.

[29] 15 U.S.C. 78f(b)(5).

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68879; File No. SR–CBOE–2012–124]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving a Proposed Rule Change To Amend Various CBOE Rules Governing Letters of Guarantee and Authorization

February 8, 2013.

On December 14, 2012, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend various CBOE Rules governing letters of guarantee and authorization. The proposed rule change was published for comment in the **Federal Register** on December 27, 2012.[3] The Commission did not receive any comment letters on the proposal. This order approves the proposed rule change.

I. Description of the Proposal

As further described below, each Trading Permit Holder (''TPH'') that has trading functions on CBOE currently is required to submit to CBOE a letter of guarantee or authorization for its trading activities on CBOE from a Clearing Trading Permit Holder (''Clearing TPH''). Typically, by a letter of guarantee, the Clearing TPH guarantees any trades made its TPH customer and, by a letter of authorization, a Clearing TPH accepts financial responsibility for all transactions on CBOE made by a guaranteed Floor Broker.

The purpose of the proposal is to amend various CBOE rules governing letters of guarantee and authorization to:

- Give CBOE the ability to prevent access to its marketplace if a TPH does not have an effective letter of guarantee or authorization on file with the Exchange;
- Provide that any written revocation of a letter of guarantee or authorization will be given effect as quickly as CBOE can process it;
- Give CBOE the ability to take any action necessary to give effect to actions

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 68487 (December 20, 2012), 77 FR 76320 (''Notice'').

by the Clearing Corporation,[4] such as restricting the activities of a Clearing TPH or suspending a Clearing TPH;

- Automatically terminate the trading permit(s) and TPH status of a TPH if the TPH does not have a required letter of guarantee or authorization in place for ninety consecutive days;
- Delete obsolete and outdated rule text; and
- Make technical, non-substantive rule text changes.

Generally, these substantive changes are designed to ensure that TPHs who engage in trading activities always have a valid letter of guarantee or authorization from a Clearing TPH.

Changes to Rule 3.28 (Letters of Guarantee). The Exchange proposes to amend CBOE Rule 3.28 so that it will govern both letters of guarantee and authorization.[5] The Exchange proposes to add new paragraphs (b) through (g) to expressly provide CBOE with remedial powers in the event the OCC restricts or suspends a Clearing TPH. The Exchange also proposes to add new paragraph (h) to Rule 3.28 to govern the termination of TPH status when a TPH is without a required letter of guarantee or authorization for a period of ninety consecutive days.

Under new paragraph (b) of the rule, a TPH may not engage in any trading activities on the Exchange if an effective letter of guarantee or authorization required to engage in those activities is not on file with the Exchange. If a Trading Permit Holder does not have an effective letter of guarantee or authorization on file with the Exchange, the Exchange will be permitted to prevent access and connectivity to the Exchange by that Trading Permit Holder. If a TPH has a letter of guarantee or authorization that is revoked or invalidated (as discussed below), that TPH's orders and quotes will be rejected after the revocation or invalidation after the revocation or invalidation becomes effective unless and until the TPH has another effective letter of guarantee or authorization in place and on file with the Exchange. This means that a TPH without an effective letter of guarantee or authorization will not be able to continue to trade on the Exchange.

Under new paragraph (c) of the rule, letters of guarantee and authorization filed with the Exchange will remain in effect until a written notice of revocation has been filed with the TPH Department and the revocation becomes effective or the letter of guarantee or authorization otherwise becomes invalid pursuant to Exchange rules. A written notice of revocation will become effective as soon as the Exchange is able to process the revocation. A revocation will in no way relieve a Clearing TPH of responsibility for transactions guaranteed prior to the effectiveness of the revocation.

Under new paragraph (d) of the rule, if the OCC restricts the activities of a Clearing TPH or suspends a Clearing TPH as a Clearing Member of the OCC, the Exchange will be permitted to give effect to the restriction or suspension. For example, if the OCC restricts transactions cleared by a Clearing TPH to ''closing only'' transactions, the Exchange similarly will be able to restrict transactions on the Exchange for clearance by that Clearing TPH as a Clearing Member of the OCC to ''closing only'' transactions; if the OCC suspends a Clearing TPH, the Exchange similarly will be able to prevent access and connectivity to the Exchange by the suspended Clearing TPH.

Under new paragraph (e) of the rule, if a Clearing TPH's status as a Clearing Member of the OCC is terminated or if a Clearing TPH's status as a CBOE TPH is terminated, all letters of guarantee and authorization on file with the Exchange from that Clearing TPH will no longer be valid, effective as of the time the Exchange processes the invalidation of those letters. Similarly, under new paragraph (f) of the rule, if a Clearing TPH has been suspended as a Clearing Member of the OCC or as a CBOE TPH, all existing letters of guarantee and authorization from that Clearing TPH will be invalid during the period of the suspension, effective as soon as the Exchange processes the invalidation of those letters.[6] New paragraph (g) of the rule provides that the invalidation of a letter of guarantee or authorization will in no way relieve the Clearing TPH that issued the letter of guarantee or authorization of responsibility from transactions guaranteed prior to the effectiveness of the invalidation.

Lastly, under the terms of new paragraph (h) of the rule, if a TPH does not have a required letter of guarantee or authorization for period of ninety consecutive days, its trading permit(s) and status as a TPH shall automatically terminate.

Changes to Rule 6.72 (Letters of Authorization). The Exchange proposes to amend CBOE Rule 6.72 to provide that a letter of authorization previously filed with the Exchange will remain effective until a written notice of revocation has been filed with the TPH Department and the revocation becomes effective or until such time that the letter of authorization otherwise becomes invalid under CBOE's rules. In the event a written notice of revocation is provided, the Exchange is proposing to provide that the revocation shall become effective as soon as the Exchange is able to process it.[7] The Exchange also proposes to eliminate a provision that allows a Clearing TPH to request that the Exchange post notice of the revocation.

The Exchange also proposes to add an internal cross reference, which provides that letters of authorization issued for Floor Brokers under Rule 6.72 will be subject to Rule 3.28.[8] The effects of this addition would:

- Allow CBOE to prevent access to its marketplace if a Floor Broker TPH does not have an effective letter of authorization on file with the Exchange;
- Allow CBOE to take action necessary to give effect to actions by the Clearing Corporation, such as restricting the activities of a Clearing TPH or suspending a Clearing TPH;
- Allow CBOE to invalidate a Floor Broker's letter of authorization if it was issued by a Clearing TPH whose Clearing TPH status as a Clearing Member of the OCC is terminated or if a Clearing TPH's status as a CBOE TPH is terminated effective as soon as the Exchange is able to process the invalidation of the letter of authorization;
- Allow CBOE to invalidate a Floor Broker's letter of authorization, if it was issued by a Clearing TPH who has been suspended as a Clearing Member of the OCC or as a CBOE TPH, during the period of the suspension effective as soon as the Exchange is able to process the invalidation of the letter of authorization;
- Provide that the invalidation of a letter of authorization shall in no way relieve the Clearing TPH that issued the letter of authorization of responsibility from transactions guaranteed prior to the effectiveness of the invalidation; and
- Automatically terminate the trading permit(s) and TPH status of a Floor Broker if the Floor Broker does not have a required letter of guarantee or

[4] Currently, The Options Clearing Corporation (''OCC'') is the only Clearing Corporation of CBOE. *See* Notice, *supra* note 3, at 76320, n.5.

[5] Currently, the rule governs only letters of guarantee. Rule 6.72 will continue to govern Letters of Authorization for Floor Brokers and Rule 8.5 will continue to govern Letters of Guarantee for Market-Makers.

[6] The Exchange states that it will endeavor to process revocations and invalidations under proposed Rules 3.28(c) and 3.28(f) in a timely manner. *See* Notice, *supra* note 3, at 76321.

[7] Currently, the rule sets forth a specific time period for the effectiveness revocations.

[8] Previously, letters of authorization issued to Floor Brokers were governed only by Rule 6.72.

authorization in place for ninety consecutive days.

Changes to Rule 8.5 (Letters of Guarantee). The Exchange proposes to amend CBOE Rule 8.5 to provide that a letter of guarantee previously filed with the Exchange will remain effective until a written notice or revocation has been filed with the TPH Department and the revocation becomes effective or until such time that the letter of guarantee otherwise becomes invalid under CBOE's rules. In the event a written notice of revocation is provided, the Exchange is proposing to provide that the revocation shall become effective as soon as the Exchange is able to process it.[9] The Exchange also proposes to eliminate a provision that allows a Clearing TPH to request that the Exchange post notice of the revocation.

Additionally, the Exchange proposes to add an internal cross-reference, which provides that letters of guarantee issued for Market-Makers under Rule 8.5 will be subject to Rule 3.28.[10] The effects of this addition would:

- Allow CBOE to prevent access to its marketplace if a Market-Maker TPH does not have an effective letter of guarantee on file with the Exchange;
- Allow CBOE to take action necessary to give effect to actions by the Clearing Corporation, such as restricting the activities of a Clearing TPH or suspending a Clearing TPH;
- Allow CBOE to invalidate a Market-Maker's letter of guarantee if it was issued by a Clearing TPH whose Clearing TPH status as a Clearing Member of the OCC is terminated or if a Clearing TPH's status as a CBOE TPH is terminated effective as soon as the Exchange is able to process the invalidation of the letter of guarantee;
- Allow CBOE to invalidate a Market-Maker's letter of guarantee, if it was issued by a Clearing TPH who has been suspended as a Clearing Member of the OCC or as a CBOE TPH, during the period of the suspension effective as soon as the Exchange is able to process the invalidation of the letter of guarantee;
- Provide that the invalidation of a letter of guarantee shall in no way relieve the Clearing Trading Holder that issued the letter of guarantee of responsibility from transactions guaranteed prior to the effectiveness of the invalidation; and
- Automatically terminate the trading permit(s) and TPH status of a Market-Maker if the Market-Maker does not have a required letter of guarantee or authorization in place for ninety consecutive days.

Further, the Exchange proposes to delete Interpretations and Policies .01, .02 and .04 from Rule 8.5 because it states that they are obsolete.[11]

Changes to Rules 24A.15 and 24B.13 (Letters of Guarantee or Authorization). The Exchange proposes to amend Rules 24A.15 and 24B.13, which relate to FLEX options, by deleting a provision in each rule relating to OCC approval of letters of guarantee that are being amended to include FLEX option transactions. According to the Exchange, that provision is obsolete because the OCC is no longer involved in approving CBOE letters of guarantee.[12]

Additionally, the Exchange proposes to add an internal cross-reference, which provides that letters of guarantee or authorization issued for FLEX Market-Makers and Floor Brokers under Rules 24A.15 and 24B.13 will be subject to Rule 3.28.[13] The effects of this addition would:

- Allow CBOE to prevent access to its marketplace if a FLEX Market-Maker or Floor Broker TPH does not have an effective letter of guarantee or authorization on file with the Exchange;
- Allow CBOE to take action necessary to give effect to actions by the Clearing Corporation, such as restricting the activities of a Clearing TPH or suspending a Clearing TPH;
- Allow CBOE to invalidate a FLEX Market-Maker or Floor Broker TPH's letter of guarantee or authorization if it was issued by a Clearing TPH whose Clearing TPH status as a Clearing Member of the OCC is terminated or if a Clearing TPH's status as a CBOE TPH is terminated effective as soon as the Exchange is able to process the invalidation of the letter of guarantee or authorization;
- Allow CBOE to invalidate a FLEX Market-Maker or Floor Broker TPH's letter of guarantee or authorization, if it was issued by a Clearing TPH who has been suspended as a Clearing Member of the OCC or as a CBOE TPH, during the period of the suspension effective as soon as the Exchange is able to process the invalidation of the letter of guarantee or authorization;
- Provide that the invalidation of a letter of guarantee or authorization shall in no way relieve the Clearing Trading Holder that issued the letter of guarantee or authorization of responsibility from transactions guaranteed prior to the effectiveness of the invalidation; and
- Automatically terminate the trading permit(s) and TPH status of a FLEX Market-Maker or Floor Broker if the FLEX Market-Maker or Floor Broker does not have a required letter of guarantee or authorization in place for ninety consecutive days.

Changes to Rules 26.11 (Market-Makers) and 26.13 (Floor Broker Financial Requirements). CBOE Rules 26.11 and 26.13 relate to market basket contracts, which the Exchange does not currently list for trading. The Exchange proposes to amend those rules by deleting a provision in each rule relating to OCC approval of letters of guarantee that are amended to include market basket transactions.[14]

Additionally, the Exchange proposes to add an internal cross-reference, which provides that letters of guarantee or authorization issued for Market-Makers in market basket contracts, and letters of authorization issued for Floor Brokers in market basket contracts, under Rules 26.11 and 26.13, respectively, will be subject to Rule 3.28.[15] The effects of this addition would:

- Allow CBOE to prevent access to its marketplace if a Market-Maker or Floor Broker TPH in market basket contracts does not have an effective letter of guarantee or authorization on file with the Exchange;
- Allow CBOE to take action necessary to give effect to actions by the Clearing Corporation, such as restricting the activities of a Clearing TPH or suspending a Clearing TPH;
- Allow CBOE to invalidate a market basket Market-Maker or Floor Broker TPH's letter of guarantee or authorization if it was issued by a Clearing TPH whose Clearing TPH status as a Clearing Member of the OCC is terminated or if a Clearing TPH's status as a CBOE TPH is terminated effective as soon as the Exchange is able to process the invalidation of the letter of guarantee or authorization;
- Allow CBOE to invalidate a market basket Market-Maker or Floor Broker

[9] Currently, the rule sets forth a specific time period for the effectiveness revocations.

[10] Previously, letters of authorization issued to Market Makers were governed only by Rule 8.5.

[11] The Exchange states that it no longer trades the product referenced in .01, and .02 and .04 are obsolete because the OCC is no longer involved in approving CBOE letters of guarantee. *See* Notice, *supra* note 3, at 76322.

[12] *See id.*

[13] Previously, letters of authorization issued to FLEX Market-Makers or Floor Brokers were only governed by Rules 24A.15 and 24B.15.

[14] The Exchange states that provision is obsolete because the OCC is no longer involved in approving CBOE letters of guarantee. *See* Notice, *supra* note 3, at 76323.

[15] Those letters of guarantee or authorization issued to Market-Makers and Floor Brokers in market basket contracts previously were governed only by Rules 26.11 and 26.13.

TPH's letter of guarantee or authorization, if it was issued by a Clearing TPH who has been suspended as a Clearing Member of the OCC or as a CBOE TPH, during the period of the suspension effective as soon as the Exchange is able to process the invalidation of the letter of guarantee or authorization;

- Provide that the invalidation of a letter of guarantee or authorization shall in no way relieve the Clearing Trading Holder that issued the letter of guarantee or authorization of responsibility from transactions guaranteed prior to the effectiveness of the invalidation; and
- Automatically terminate the trading permit(s) and TPH status of a Market-Maker or Floor Broker in market basket contracts if the Market-Maker or Floor Broker in market basket contracts does not have a required letter of guarantee or authorization in place for ninety consecutive days.

II. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[17] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange's proposal will remove impediments to and to perfect the mechanism for a free and open market and, in general, protect investors by requiring that a TPH have an effective and unrestricted letter of guarantee, which will help prevent the execution of trades on CBOE that ultimately may not be able to be cleared and settled.

The Commission also finds that the proposed rule change is also consistent with the Section 6(b)(7) of the Act,[18] which requires that the rules of an exchange provide a fair procedure for the denial of membership to any person seeking membership therein and the prohibition or limitation by an exchange of any person with respect to access to services offered by the exchange. Under the proposed rule change, a TPH without an effective letter of guarantee or authorization will not be able to continue to trade on the Exchange and, if a TPH does not have a required letter of guarantee or authorization in place for ninety consecutive days, the permit of the TPH is automatically terminated. The Commission believes that it is appropriate to prohibit a TPH from trading on CBOE without a financial guarantee, and the 90-day period provides the TPH adequate time to cure its deficiency. The Commission notes that CBOE stated that the automatic termination provision does not prohibit or limit a previously terminated TPH from applying again to become a TPH once the TPH acquires the required letter of guarantee or authorization.[19]

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–CBOE–2012–124) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03428 Filed 2–14–13; 8:45 am]

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[16] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b)(7).

[19] *See* Notice, *supra* note 3, at 76324.

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68897; File No. SR–C2–2013–007]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

February 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 2013, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change [sic] available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule. First, to correspond with other changes to equity options fees that the Exchange has proposed to take effect on February 1, 2013,[3] C2 proposes to state that for all complex order transactions in equity options classes, all components of such transactions (including simple, non-complex orders and/or quotes that execute against a complex order) will be assessed no fee (or rebate). In SR–C2–2013–004, the Exchange proposes to adopt equity options transaction fees that are based, in part, on the C2 BBO Market Width. Because it would be difficult to determine the C2 BBO Market Width for spread transactions (which involve complex orders), the Exchange is still in the process of determining how to assess fees for such transactions. As such, C2 proposes, until making such determination, to assess no fees (or rebates) for all complex order transactions. The Exchange does not anticipate receiving many complex

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* SR–C2–2013–004, available for viewing at *http://www.c2exchange.com/Legal/RuleFilings.aspx.*

orders in equity options in the near future.

In conjunction with C2's recent adoption of Designated Primary Market-Makers (''DPMs'')[4] for equity options classes, the Exchange also proposes to amend its Fees Schedule to exclude Public Customer orders (in equity options classes) from the Linkage[5] Routing Fee of $0.50 per routed contract in addition to applicable C2 taker fee. Instead, for Public Customer orders in equity options classes, C2 proposes to pass through the actual transaction fee assessed by the exchange(s) to which the order was routed. Other exchanges that use the DPM/Specialist model, including Chicago Board Options Exchange, Incorporated (''CBOE'') and NYSE MKT LLC (''Amex''), pass through fees (with some modifications) for such customer order routing.[6]

The Exchange has determined to increase the quoting bandwidth allowance for a Market-Maker Permit in order to provide greater quoting capacity for Market-Makers. Currently, such allowance is the equivalent to 156,000,000 quotes over the course of a day. This allowance will be increased to 195,000,000 quotes over the course of a day.

Because the registration cost for SPXPM is 1.0, a full Market-Maker Trading Permit (cost $5,000 per month) is required for an Exchange Trading Permit Holder (''TPH'') to act as a Market-Maker in SPXPM. As such, because the Exchange intends to cease the listing and trading of SPXPM options following the close of trading on Friday, February 15, 2013, the Exchange proposes that, for any Market-Maker Permit used in February 2013 solely to act as a Market-Maker in SPXPM, C2 will credit back to the Market-Maker a pro-rated amount (corresponding to the portion of the month during which SPXPM is not listed on C2) of the Market-Maker Permit cost.

The Exchange also proposes to eliminate the distinction between Sponsored Users and non-Sponsored Users as they relate to Connectivity Charges. Currently, Sponsored Users are charged twice the regular monthly fees for such charges, with the types and amounts of such fees described in the chart below:

Description	Regular monthly fee	Sponsored user monthly fee
Network Access Port (1 Gbps)	$500	$1,000
Network Access Port (10 Gbps)	$1,000	$2,000
CMI Login ID	$500	$1,000
FIX Login ID	$500	$1,000

Going forward, the Exchange proposes to assess to Sponsored Users and all other non-TPHs the same Connectivity Charges as are assessed to TPHs, and to state that all such fees apply to non-TPHs as well as TPHs. The purpose of the proposed change is to simplify the Exchange's fees structure for connectivity to the Exchange and have a standard set of connectivity fees that apply to both TPHs and non-TPHs.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[7] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[8] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

Assessing no fees for complex order executions in equity options classes is reasonable because market participants will not have to pay a fee for such executions. This change is equitable and not unfairly discriminatory because it would otherwise be difficult to determine the amount of fees for spread transactions (given the Exchange's new manner of determining equity options fees), and because all market participants will be assessed no fee for such transactions. Further, many exchanges (including C2) currently offer different pricing for complex orders than for simple orders.[9]

Passing through Linkage Fees for Public Customer orders is reasonable because it will merely require Public Customers to pay the amount of fees assessed for the execution of their orders on the away market(s) on which such orders are executed. This change is equitable and not unfairly discriminatory because, while it allows Public Customers to avoid the $0.50 per contract fee (in addition to the applicable C2 taker fee) that is assessed to other market participants for Linkage orders, it may encourage Public Customers to send more orders to the Exchange (without worrying about the fees that would be incurred if such orders are sent to away markets). Thus, more Public Customer orders (some that do get sent to away markets, and some that do not) may be sent to the Exchange. This provides greater liquidity, which benefits all market participants. Further, there is a history within the options marketplace of providing different fee structures for Public Customers than for other market participants. Moreover, a number of other exchanges, including CBOE and Amex, pass through Linkage fees to Public Customers and assess different Linkage fees to Public Customers than to other market participants (indeed, C2's proposed pass-through of Public Customer Linkage Fees is favorable to that on Amex, which passes through the fee and adds an $0.11 per contract surcharge).[10]

Increasing the quoting bandwidth allowance is reasonable because it will allow Market-Makers to quote more. This increase is equitable and not unfairly discriminatory because it will apply to all Market-Maker Permits. Further, the increase in quoting bandwidth allowance will allow Market-Makers to quote more, which will provide more trading opportunity for all market participants.

Crediting back to a Market-Maker the pro-rated amount of the Market-Maker Permit fee for a Market-Maker Permit that is used solely for a TPH to act as

[4] *See* Securities Exchange Act Release No. 68070 (October 18, 2012), 77 FR 65037 (October 24, 2012) (SR–C2–2012–024).

[5] ''Linkage'' is the commonly-used term that refers to the Options Order Protection and Locked/Crossed Market Plan.

[6] *See* CBOE Fees Schedule, table on Linkage Fees, and Amex Routing Surcharge.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] *See* Amex Fee Schedule *and* International Securities Exchange, LLC (''ISE'') Schedule of Fees, Section II *and also* C2 Fees Schedule, Section 1C.

[10] *See* CBOE Fees Schedule, table on Linkage Fees, and Amex Routing Surcharge.

a Market-Maker in SPXPM during February 2013 is reasonable because SPXPM will only be listed and traded during a portion of the month of February 2013, so it makes sense to only assess the Market-Maker Permit fee for that portion of the month. This is equitable and not unfairly discriminatory because it will apply to all Market-Maker Permits that are used solely for a TPH to act as a Market-Maker in SPXPM during February 2013.

Eliminating, for the purpose of Connectivity Charges, the distinction between Sponsored Users and stating that these fees apply to both TPHs and non-TPHs is reasonable because it will allow Sponsored Users and other non-TPHs to pay half the amount that Sponsored Users are currently assessed for such fees and ensure that TPHs and non-TPHs pay the same amounts in connectivity fees. The proposed change is equitable and not unfairly discriminatory because it will allow Sponsored Users and non-TPHs to be assessed the same amounts as TPHs.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C2 believes that assessing no fee for all complex order transactions in equity options classes will not impose any burden on intramarket competition because all market participants will be assessed no fee for such transactions. C2 believes that this will not impose a burden on intermarket competition, but to the extent that not assessing transaction fees on all complex order transactions in equity options classes may attract market participants on other exchanges to C2, such market participants can always elect to become C2 market participants.

The Exchange believes that passing through an away market's transaction fees for Public Customer orders sent to such away market(s) will not impose an unfair burden on intramarket competition because, while it allows Public Customers to avoid the $0.50 per contract fee (in addition to the applicable C2 taker fee) that is assessed to other market participants for Linkage orders, it may encourage Public Customers to send more orders to the Exchange (without worrying about the fees that would be incurred if such orders are sent to away markets). Thus, more Public Customer orders (some that do get sent to away markets, and some that do not) may be sent to the Exchange. This provides greater liquidity, which benefits all market participants. Further, there is a history within the options marketplace of providing different fee structures for Public Customers than for other market participants. The Exchange believes that this will not impose an unfair burden on intermarket competition because a number of other exchanges, including CBOE and Amex, pass through Linkage fees to Public Customers and assess different Linkage fees to Public Customers than to other market participants (indeed, C2's proposed pass-through of Public Customer Linkage Fees is favorable to that on Amex, which passes through the fee and adds an $0.11 per contract surcharge).[11] To the extent that this pass-through may be attractive to Public Customers to send orders to C2 instead of other markets, such Public Customers may elect to do so.

The Exchange does not believe that increasing the quoting bandwidth allowance for Market-Maker Permits will cause an unfair burden on intramarket competition because this increase applies to only, and all, C2 Market-Makers (just as does the current lower quoting bandwidth allowance). Further, the increase in quoting bandwidth allowance will allow Market-Makers to quote more, which will provide more trading opportunity for all market participants. The Exchange does not believe that this increase will cause an unfair burden on intermarket competition because, to the extent that this increased quoting bandwidth allowance may be attractive to Market-Makers at other exchanges, such Market-Makers may register as Market-Makers on C2.

The Exchange does not believe that crediting back to a Market-Maker the pro-rated amount of the Market-Maker Permit fee for a Market-Maker Permit that is used solely for a TPH to act as a Market-Maker in SPXPM during February 2013 will cause an unfair burden on intramarket competition because it only applies to Market-Makers using a Market-Maker Permit solely to act as a Market-Maker in SPXPM, which is the only options class with a full 1.0 registration cost that the Exchange intends to cease listing and trading in the middle of February 2013. The Exchange does not believe that this will cause an unfair burden on intermarket competition because SPXPM is only traded on C2.

The Exchange believes that eliminating, for the purpose of Connectivity Charges, the distinction between Sponsored Users and stating that these fees apply to both TPHs and non-TPHs will relieve any possible burden on intramarket competition because it will ensure that TPHs and non-TPHs will be paying the same fee amounts. The Exchange believes that the proposed change will not impose any burden on intermarket competition, or have an impact on intermarket competition, because the proposed changes apply merely to connections to C2, and each exchange has different manners and structures for connectivity. Further, to the extent that the elimination of separate higher fees for Sponsored Users and the statement that the regular fees apply to both TPHs and non-TPHs could attract market participants connecting to other exchanges to connect to C2, market participants trading on other exchanges can always elect to do so.

The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange, and the Exchange believes that such structure will help the Exchange remain competitive with those fees and rebates assessed by other venues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and paragraph (f) of Rule 19b–4[13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

[11] *See* CBOE Fees Schedule, table on Linkage Fees, and Amex Routing Surcharge.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f).

including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov*. Please include File Number SR–C2–2013–007 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2013–007. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2013–007, and should be submitted on or before March 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03569 Filed 2–14–13; 8:45 am]

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[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68895; File No. SR–BYX–2013–004]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Y-Exchange, Inc.

February 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19–4 thereunder,[2] notice is hereby given that on January 29, 2013, BATS Y-Exchange, Inc. (the "Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BYX Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal will be effective upon filing.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19–4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its fee schedule in order to amend the fee structure related to its Retail Price Improvement ("RPI") program. Under the RPI program as currently constituted, the Exchange generally provides a rebate of $0.0025 per share for Retail Orders that remove liquidity from the BYX Exchange order book in certain specified securities and provides a rebate of $0.0010 per share for a Retail Order that removes liquidity from the BYX Exchange order book in other specified securities. For executions of Type 2 Retail Orders that remove displayed liquidity, however, the Exchange's fee schedule states that it applies standard removal pricing (*i.e.,* either a $0.0002 per share liquidity removal rebate or an execution free of charge) rather than specific RPI pricing.

The Exchange wishes to note that the standard removal pricing applied to Type 2 Retail Orders that remove displayed liquidity includes Type 2 Retail Orders that remove displayed orders at a price more aggressive than the displayed price of such orders—this includes displayed orders subject to display-price sliding and displayed discretionary orders. The Exchange proposes to modify the fee schedule, including a related footnote, to extend the application of its standard removal pricing to include Type 1 Retail Orders that remove displayed liquidity, including orders that are displayed at a less aggressive price, but are willing to execute at a non-displayed and more aggressive price (again, displayed orders subject to display-price sliding and displayed discretionary orders).

As proposed, all Retail Orders (both Type 1 and Type 2 Retail Orders) that remove displayed liquidity would be, in all cases, subject to the Exchange's standard removal fees or rebates, as applicable. Under the proposed pricing structure, a Member that qualifies for the Exchange's $0.0002 per share liquidity removal rebate will receive such rebate for any Retail Order that removes displayed liquidity, and a Member that does not qualify for the liquidity removal rebate would not receive such rebate, but would instead receive the execution of a Retail Order that removes displayed liquidity free of charge. With this in mind, the Exchange believes that providing a lower rebate or a free execution for incoming Retail Orders that interact with displayed liquidity at price improving prices is reasonable due to the price improvement received; such price improvement will help to offset and likely exceed the reduction in rebates for such orders. Further, the Exchange believes that this change will ensure that Members are properly incented to continue to add aggressively priced, displayed liquidity to the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[6] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[7] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive.

The Exchange believes that its proposal to modify the fee schedule and footnote related to the RPI program is reasonable, equitably allocated and not unfairly discriminatory because this change will result in the application of standard pricing to remove displayed liquidity. The Exchange is concerned that applying higher pricing to displayed orders that are aggressively priced to the extent such orders are displayed by the Exchange and interact with incoming Retail Orders may result in reduced levels of aggressively priced, displayed liquidity on the Exchange. Additionally, the Exchange believes that providing a lower rebate or no rebate to incoming Retail Orders that interact with displayed liquidity is reasonable because, to the extent that such orders interact with displayed liquidity at more aggressive, non-displayed prices, the price improvement received for such executions will help to offset or exceed the reduction in rebates for such orders. Accordingly, the Exchange believes it is reasonable to apply standard pricing to any order displayed by the Exchange, even if removed by a Retail Order pursuant to the RPI program.

B. Self-Regulatory Organization's Statement on Burden on Competition

Because the market for order execution is extremely competitive, Members may choose to preference other market centers ahead of the Exchange if they believe that they can receive better fees or rebates elsewhere. The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange believes that its pricing for displayed orders is appropriately competitive vis-à-vis the Exchange's competitors. Further, the Exchange believes that continuing to incentivize the entry of aggressively priced, displayed liquidity fosters intra-market competition to the benefit of all market participants that enter orders to the Exchange, including Retail Orders.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and paragraph (f) of Rule 19–4 thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BYX–2013–004 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2013–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BYX–2013–004, and should be submitted on or before March 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03520 Filed 2–14–13; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68899; File No. SR–NASDAQ–2013–027]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Pricing Clarification

February 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 4, 2013, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to add references to certain terms in Chapter XV, entitled ''Options Pricing,'' which governs pricing for NASDAQ members using the NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options. The Exchange also proposes a technical amendment to Section 2 of Chapter XV, entitled ''NASDAQ Options Market—Fees and Rebates.''

The text of the proposed rule change is also available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to add certain references to Chapter XV in order to provide greater clarity to the terms used throughout this Chapter for the purpose of assessing fees and paying rebates. Specifically, the Exchange proposes to add the terms ''Customer,'' ''NOM Market Maker,'' ''Non-NOM Market Maker,'' ''Firm,'' ''Professional,'' and ''Broker-Dealer'' to Chapter XV to provide guidance on how the Exchange applies the fees and rebates in Chapter XV to these categories of market participants. The Exchange proposes to state that the term ''Customer'' or (''C'') applies to any transaction that is identified by a NOM Participant for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of a broker or dealer or for the account of a ''Professional'' (as that term is defined in Chapter I, Section 1(a)(48)). The Exchange proposes to state that the term ''NOM Market Maker'' or (''M'') is a NOM Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the NOM Participant must be registered as a NOM Market Maker in at least one security. The Exchange proposes to state that the term ''Non-NOM Market Maker'' or (''O'') is a registered market maker on another options exchange that is not a NOM Market Maker. A Non-NOM Market Maker must append the proper Non-NOM Market Maker designation to orders routed to NOM. The Exchange proposes to state that the term ''Firm'' or (''F'') applies to any transaction that is identified by a NOM Participant for clearing in the Firm range at OCC. The Exchange proposes to state that the term ''Professional'' or (''P'') means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by NOM Participants. Finally, the Exchange proposes to state that the term ''Broker-Dealer'' or (''B'') applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category. The order capacity codes, ''C,'' ''M,'' ''O,'' ''F,'' ''P,'' and ''B'' are codes that have been established by the Exchange related to the order entry ports using the Financial Information Exchange (''FIX'') protocol.

The Exchange also proposes to define the term ''Common Ownership'' in Chapter XV. That term is currently defined and used throughout Section 2 of Chapter XV. The Exchange proposes to define it once at the beginning of Chapter XV as Participants under 75% common ownership or control and remove all other definitions in Section 2. The Exchange is not amending the current use of that term, but rather proposing to create a single definition for ease of reference.

The Exchange also proposes to define the terms ''adding liquidity'' and ''removing liquidity'' for purposes of Chapter XV, Section 2(1) pricing. Specifically, the Exchange proposes to state that ''[w]ith respect to Chapter XV, Sections 2(1) and (2) the order that is received by the trading system first in time shall be considered an order adding liquidity and an order that trades against that order shall be considered an order removing liquidity.'' The Exchange believes that specifying which orders are considered adding and which orders are considered removing liquidity would further clarify NOM's pricing.

Finally, the Exchange proposes to amend the numbering in Section 2 of Chapter XV to renumber the current Section 2(4). The Exchange recently filed a rule change to eliminate Section 2(3).[3] At this time, the Exchange is proposing to renumber Section 2(4) as Section 2(3).

2. Statutory Basis

NASDAQ believes that its proposal to amend Chapter XV of the Rules to add references to various terms is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(5) of the Act[5] in particular. The Exchange's proposal to clarify its pricing is intended to provide additional guidance to market participants with respect to the application of fees and rebates in Chapter XV, similar to other options exchanges.[6] Further, the Exchange also proposes to provide clarification regarding the manner in which the Exchange applies fee and rebates for adding and removing liquidity and define Common Ownership for ease of

[3] *See* SR–NASDAQ–2013–013 (not yet published).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4) and (5) [sic].

[6] *See* NASDAQ OMX PHLX LLC's Pricing Schedule. *See also* the International Securities Exchange, LLC's Fee Schedule.

reference. The Exchange believes the addition of these references will provide additional transparency to Chapter XV of the Exchange's Rules.

The Exchange does not believe that there is confusion among market participants with respect to the terms described herein, but rather that the addition of these terms to Chapter XV would serve to provide transparency and guidance to the benefit of all market participants. The Exchange believes that the proposal is consistent with Section 6(b)(5) in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by clarifying what fees and rebate in Chapter XV apply to certain transactions and market participants.

The Exchange is not amending the manner in which it applies pricing to various Participants. The proposed terms merely codify the manner in which the Exchange assesses fees and pays rebates today and defines Common Ownership today. Similarly, the manner in which fees and rebates for adding and removing liquidity are applied is not changing but merely codified by the addition of the terms to Chapter XV.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange is merely filing this clarification to specify how certain fees and rebates in Chapter XV are applied to market participants. The Exchange believes that this clarification will provide greater transparency to market participants. The Exchange does not believe that this amendment creates intramarket competition among Participants as it is applied uniformly to all Participants. The Exchange believes that clarifying the applicability of certain fees and rebates for adding and removing liquidity within the Pricing Schedule provides market participants clear guidance.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved. The Exchange has provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2013–027 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2013–027. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at NASDAQ's principal office. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2013–027, and should be submitted on or before March 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03545 Filed 2–14–13; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(a)(ii).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68894; File No. SR–CHX–2013–06]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Alter the Circumstances Under Which Liquidity Providing Credits are Paid to Institutional Brokers

February 11, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 6, 2013, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CHX proposes to amend Exchange Rules and its Schedule of Participant Fees and Assessments (the ''Fee Schedule'') to alter the circumstances under which liquidity providing credits are paid to Institutional Brokers. The Exchange proposes to implement the fee change on February 6, 2013. The text of this proposed rule change is available on the Exchange's Web site at *http://www.chx.com/rules/proposed_rules.htm,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Through this filing, the Exchange proposes to amend its Fee Schedule to alter the circumstances under which liquidity providing credits are paid to Institutional Brokers. The Exchange proposes to make the fee change operative on February 6, 2013.

Currently, for agency executions on the Exchange through an Institutional Broker, Section E.3.a of the Fee Schedule charges a fee of $.003/share, up to a maximum of $100 per side for all securities priced $1.00/share or more in all sessions. Liquidity removing fees are not charged to Institutional Brokers for single sided orders pursuant to Section E.1.(a) of the Fee Schedule. When a single sided order provides liquidity, Section E.1.(b) of the Fee Schedule specifies that a liquidity providing credit of $0.0022/share in all Derivative Securities Products priced $1.00/share or more executed in the Regular Trading Session shall be paid to the Institutional Broker representing the Participant which originated the order. Additionally, for single sided orders, Section E.1.(c) of the Fee Schedule specifies that a liquidity providing credit of $0.0022/share in all securities priced $1.00/share or more executed in the Early or Late Trading Sessions shall be paid to the Institutional Broker representing the Participant which originated the order. Although infrequent, this pricing structure can result in a scenario in which the fees charged by the Exchange are capped due to the $100 per side cap while the credits paid are uncapped, thus resulting in transaction that is revenue negative to the Exchange.

The Exchange now proposes to amend Section E.1.(b) of the Fee Schedule to specify that a liquidity providing credit of $0.0022/share in all Derivative Securities Products priced $1.00/share or more executed in the Regular Trading Session shall be paid to the Institutional Broker representing the Participant which originated the order, unless such Institutional Broker also represents the Participant which originated the matched liquidity taking order. Similarly, the Exchange would amend Section E.1.(c) of the Fee Schedule to specify that a liquidity providing credit of $0.0022/share in all securities priced $1.00/share or more executed in the Early or Late Trading Sessions shall be paid to the Institutional Broker representing the Participant which originated the order, unless such Institutional Broker also represents the Participant which originated the matched liquidity taking order. The Exchange believes that these changes will allow it to continue to incent liquidity providing orders while at the same time limiting transactions that are revenue negative to the Exchange. The Exchange notes that the rates associated with the fees being charged and credits paid do not change as a result of this filing.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act[5] in particular because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, or broker dealers.

The Exchange believes that the change provides for the equitable allocation of reasonable fees because it is being proposed to address a specific scenario in which the fees charged by the Exchange are capped while the credits paid under certain circumstances are uncapped, thus resulting in transaction that is revenue negative to the Exchange.

The Exchange also believes that the proposed change is not unfairly discriminatory because it applies equally to all CHX registered Institutional Brokers. The Exchange also notes that the rates associated with the fees being charged and credits paid do not change as a result of this filing.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The rule change is designed to address a specific scenario in which the fees charged by the Exchange are capped while the credits paid under certain circumstances are uncapped, thus resulting in transaction that is revenue negative to the Exchange. As stated above, the rates associated with the fees being charged and credits paid do not change as a result of this filing.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4) and (5).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

subparagraph (f)(2) of Rule 19b–4 thereunder[7] because it establishes or changes a due, fee or other charge imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CHX–2013–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2013–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2013–06, and should be submitted on or before March 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03519 Filed 2–14–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68900; File No. SR–CBOE–2013–014]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fees Schedule

February 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 2013, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to eliminate the distinction between Sponsored Users and non-Sponsored Users as they relate to CBOE Command Connectivity Charges. Currently, Sponsored Users are charged twice the regular monthly fees for such charges, with the types and amounts of such fees described in the chart below:

Description	Regular monthly fee	Sponsored user monthly fee
Network Access Port (1 Gbps)	$500	$1,000
Network Access Port (10 Gbps)	3,000	6,000
Network Access Port (Disaster Recovery)	250	500
CMI Login ID	500	1,000
FIX Login ID	500	1,000

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Going forward, the Exchange proposes to assess to Sponsored Users and all other non-Trading Permit Holders the same CBOE Command Connectivity Charges as are assessed to Trading Permit Holders (''TPHs''), and to state that all such fees apply to non-TPHs as well as TPHs. The purpose of the proposed change is to simplify the Exchange's fees structure for connectivity to the Exchange and have a standard set of connectivity fees that apply to both TPHs and non-TPHs.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[3] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,4 which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. Eliminating, for the purpose of CBOE Command Connectivity Charges, the distinction between Sponsored Users and stating that these fees apply to both TPHs and non-TPHs is reasonable because it will allow Sponsored Users and other non-TPHs to pay half the amount that Sponsored Users are currently assessed for such fees. The proposed change is equitable and not unfairly discriminatory because it will allow Sponsored Users and non-TPHs to be assessed the same amounts as TPHs.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Eliminating, for the purpose of CBOE Command Connectivity Charges, the distinction between Sponsored Users and stating that these fees apply to both TPHs and non-TPHs will relieve any possible burden on intramarket competition because it will ensure that TPHs and non-TPHs will be paying the same fee amounts. The Exchange believes that the proposed change will not impose any burden on intermarket competition, or have an impact on intermarket competition, because the proposed changes apply merely to connections to CBOE, and each exchange has different manners and structures for connectivity. Further, to the extent that the elimination of separate higher fees for Sponsored Users and the statement that the regular fees apply to both TPHs and non-TPHs could attract market participants connecting to other exchanges to connect to CBOE, market participants trading on other exchanges can always elect to do so.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [5] and paragraph (f) of Rule 19b–4 [6] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2013–014 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–CBOE–2013–014*. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2013–014 and should be submitted on or before March 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03576 Filed 2–14–13; 8:45 am]

BILLING CODE 8011–01–P

[3] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 C.F.R. 240.19b–4(f).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68898; File No. SR–NYSEArca-2013–11]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule To Introduce a New Electronic Customer Rate for Certain Executions That Take Liquidity

February 11, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on January 29, 2013, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (the ''Fee Schedule'') to introduce a new electronic Customer rate for certain executions that take liquidity. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Exchange's Fee Schedule to introduce a new electronic Customer rate of $0.67 per contract for executions that take liquidity in a non-Penny Pilot class from the trading interest of a Lead Market Maker (''LMM''), if the OTP Holder or OTP Firm entering the Customer's order satisfies certain volume thresholds. The Exchange proposes to implement the fee changes on February 1, 2013.

An electronic Customer execution in a non-Penny Pilot class is currently subject to a take fee of $0.79 per contract. Unlike an execution in a Penny Pilot class, the rate for an electronic execution in a non-Penny Pilot class is not currently dependent on the account type of the counterparty. The Exchange proposes to introduce a new electronic Customer take rate of $0.67 per contract for executions that take liquidity in a non-Penny Pilot class from the trading interest of an LMM (including orders and quotes) if the OTP Holder or OTP Firm entering the Customer's order, during the month, (i) transacts an average daily volume (''ADV'') on the Exchange of at least 15,000 contracts from electronic Customer orders that take liquidity in non-Penny Pilot classes or (ii) transacts a combined ADV on the Exchange of at least 30,000 contracts in non-Penny Pilot classes from electronic Customer orders that take liquidity and affiliated electronic Market Maker orders and quotes that post liquidity in non-Penny Pilot classes.[4]

The Exchange believes that the proposed rate, which would only apply to the Customer side of an execution that takes liquidity against trading interest of an LMM, will incent additional posted liquidity at the NBBO by LMMs as well as additional Customer orders being sent to the Exchange for execution.

The Exchange notes that the proposed change is not otherwise intended to address any other issues, and the Exchange is not aware of any problems that Customers, LMMs, OTP Holders or OTP Firms would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[6] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change is reasonable because the proposed rate, which would only apply to the Customer side of an execution that takes liquidity against trading interest of an LMM, will incent additional posted liquidity at the NBBO by LMMs as well as additional Customer orders being sent to the Exchange for execution. First, the proposed lower Customer rate would incent an OTP Holder or OTP Firm to send additional Customer orders to the Exchange because its customers' transaction costs could be decreased. Second, an OTP Holder or OTP Firm that is affiliated with an LMM on the Exchange would be incented to send additional Customer order flow to the Exchange for execution in order to increase the likelihood that its LMM will interact with those orders. Third, and building on the two points above, an LMM would be incented to post additional liquidity at the NBBO, thereby rendering a Customer order that executes against the LMM's trading interest a taker of liquidity and eligible for the lower Customer take rate.

The Exchange believes that the proposed new rate and related thresholds are reasonable because they are set at levels that will encourage OTP Holders and OTP Firms to send additional Customer orders to the Exchange. Further, the Exchange believes that the proposed thresholds are reasonable because, despite being set at levels that OTP Holders and OTP Firms do not currently satisfy, the Exchange believes they are achievable for OTP Holders and OTP Firms that send Customer orders to the Exchange, whether they are OTP Holders and OTP Firms that predominantly send Customer orders to the Exchange or OTP Holders and OTP Firms that are affiliated with a Market Maker on the Exchange.

The Exchange believes that the proposed new rate is equitable and not unfairly discriminatory because it will be available to all OTP Holders and OTP Firms that transact electronic Customer orders on the Exchange, on an equal and non-discriminatory basis.

The Exchange further believes that it is equitable and not unfairly discriminatory to generally charge a lower fee to Customers, as compared to non-Customers, because Customers are less sophisticated than non-Customers and the proposed change is intended to attract a higher level of Customer order flow to the Exchange, which benefits both Customers and non-Customers. In this regard, the Exchange believes that the proposed change is equitable and not unfairly discriminatory because the lower Customer take rate would incent OTP Holders and OTP Firms to send additional Customer order flow to the Exchange for execution, which would benefit the quality of the Exchange's market and, in turn, be beneficial to all market participants. Accordingly, the proposed new Customer take rate would be reasonably related to the value to the Exchange's market quality associated with higher volumes in Customer order flow.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[4] For purposes of calculating ADV for the qualification, the Take Liquidity threshold does not include orders that are routed to other exchanges for execution at the National Best Bid and Offer (''NBBO''); Post or Take Liquidity calculations do not include volume from Electronic Complex Orders.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4) and (5).

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. In this regard, and for the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment and would permit the Exchange's pricing for electronic Customer executions in non-Penny Pilot classes that take liquidity while executing against LMMs to remain competitive with pricing applicable on other option exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [7] of the Act and subparagraph (f)(2) of Rule 19b–4 [8] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [9] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2013–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2013–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2013–11, and should be submitted on or before March 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–03572 Filed 2–14–13; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

[9] 15 U.S.C. 78s(b)(2)(B).

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before March 18, 2013. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer,* Curtis Rich, Curtis.rich@sba.gov Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: ''Statement of Personal History.''

Frequency: On Occasion.

SBA Form Number: 912.

Description of Respondents: Character determination for SBA Applicant.

Responses: 142,000.

Annual Burden: 35,000.

Title: ''Microloan Program Electronic Reporting System.''

Frequency: On Occasion.

SBA Form Number: N/A.

Description of Respondents: Participants for the Microloan program.

Responses: 2,500.

Annual Burden: 625.

Curtis Rich,

Management Analyst.

[FR Doc. 2013–03603 Filed 2–14–13; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review; National Women's Business Council

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before March 18, 2013. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Director of Research and Policy, Emily Bruno Emily.Bruno@nwbc,gov* or *Clearance Officer,* Curtis Rich, *Curtis.Rich@sba.gov* Small Business Administration, 409 3rd Street SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030.

SUPPLEMENTARY INFORMATION:

Title: ''Focus Group Research: Women Entrepreneurs, Self-Limiting Perceptions, and Segmentation.''

Frequency: On Occasion.

SBA Form Number: N/A.

Description of Respondents: Women entrepreneurs in a range of industries and sectors across the United States.

Responses: 144.

Annual Burden: 144.

Anie J. Borja,

Executive Director .

[FR Doc. 2013–03557 Filed 2–14–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice 8186]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Cyrus Cylinder in Ancient Persia: A New Beginning''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''The Cyrus Cylinder in Ancient Persia: A New Beginning,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Arthur M. Sackler Gallery, Smithsonian Institution, Washington, DC, from, on or about March 9, 2013, until on or about April 28, 2013; The Museum of Fine Arts, Houston, TX, from on or about May 3, 2013, until on or about June 14, 2013; The Metropolitan Museum of Art, New York, NY, from on or about June 20, 2013, until on or about August 4, 2013; The Asian Art Museum, San Francisco, CA, from on or about August 9, 2013, until on or about September 22, 2013; the Getty Villa, The J. Paul Getty Museum, Los Angeles, CA, from on or about October 2, 2013, until or about December 2, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: February 11, 2013.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013–03609 Filed 2–14–13; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: National Flight Data Center Web Portal

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. NFDC Web Portal forms are used to collect aeronautical information, detailing the physical description and operational status of all components of the National Airspace System (NAS). This collection was granted emergency clearance by OMB on January 23, 2012. This submission includes the additional public burden for the Special Flight Area processing tool.

DATES: Written comments should be submitted by April 16, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0754.

Title: National Flight Data Center Web Portal.

Form Numbers: FAA Forms 7900–5, 7900–6, 7900–XX.

Type of Review: Renewal of an information collection.

Background: The National Flight Data Center (NFDC) is the authoritative government source for collecting, validating, storing, maintaining, and disseminating aeronautical data concerning the United States and its territories to support real-time aviation activities. The information collected ensures the safe and efficient navigation of the national airspace. The information collected is maintained in the National Airspace System Resources (NASR) database which serves as the official repository for NAS data and is provided to government, military, and private producers of aeronautical charts, publications, and flight management systems.

Respondents: 7,318 representatives of U.S. public airports, U.S. privately-owned instrument landing systems, and non-Federal weather systems.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 25 minutes per response.

Estimated Total Annual Burden: 1,296 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on February 11, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–03553 Filed 2–14–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Aircraft Registration Renewal

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. Aircraft owners are required to complete the Aircraft Registration Renewal to verify the registration information and renew registration triennially. The information collected on an Aircraft Re-Registration Application, AC Form 8050–1A and an Aircraft Registration Renewal Application, AC Form 8050–1B, will be used by the FAA to verify and update aircraft registration information collected for an aircraft when it was first registered.

DATES: Written comments should be submitted by April 16, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0729.

Title: Aircraft Re-Registration and Registration Renewal.

Form Numbers: AC Forms 8050–1A and 8050–1B.

Type of Review: Renewal of an information collection.

Background: The information collected on an Aircraft Re-Registration Application (AC Form 8050–1A) and Aircraft Registration Renewal Application (AC Form 8050–1B) will be used by the FAA to verify and update the aircraft registration information collected for an aircraft when it was first registered.

The updated registration database will then be used by the FAA to monitor and control U.S. airspace and to distribute safety notices and airworthiness directives to aircraft owners. Law enforcement and national security agencies will use the database to support drug interdiction and activities related to national security.

Respondents: Approximately 121,660 aircraft owners.

Frequency: Information is collected triennially.

Estimated Average Burden per Response: 30 minutes.

Estimated Total Annual Burden: 60,830 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, AES–200, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on February 11, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–03554 Filed 2–14–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2013–03]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number involved and must be received on or before March 7, 2013.

ADDRESSES: You may send comments identified by Docket Number FAA–2012–0706 using any of the following methods:

- *Government-wide rulemaking web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Forseth, ANM–113, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356; email *mark.forseth@faa.gov*, phone (425) 227–2796; or Andrea Copeland, ARM–208, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; email *andrea.copeland@faa.gov*, phone (202) 267–8081.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on February 7, 2013.

Lirio Liu,

Director, Office of Rulemaking.

Petition For Exemption

Docket No.: FAA–2012–0706.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: § 25.981(a)(3) at Amendment 25–64.

Description of Relief Sought: Exemption from the requirements of fuel-tank structural lightning protection for the fuel tanks on Boeing Model 767–2C airplanes. This is a correction to a prior summary notice, published in the **Federal Register** on October 30, 2012 (77 FR 65763), that incorrectly specified 747–8 airplanes.

[FR Doc. 2013–03402 Filed 2–14–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2013–0003]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by April 16, 2013.

ADDRESSES: You may submit comments identified by DOT Docket ID 2013–0003 by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Shane D. Boone, 202–493–3064, Nondestructive Evaluation Research Program, Federal Highway Administration, Department of Transportation, 6300 Georgetown Pike, McLean, VA 22101. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Non-Destructive Inspection Protocol for Reinforced Concrete Highway Barriers and Bridge Railings.

Background: Highway barriers and bridge railings serve to prevent errant vehicles from departing the travelway at grade separations. Most bridge railings are made of reinforced concrete. Despite the important role that they play in maintaining safety and their ubiquitous nature, barrier inspection rarely moves beyond visual inspection. In August of 2008, tractor-trailer dislodged a section of barrier on the William Preston Lane, Jr. Memorial Bridge. Portions of the displaced barrier separated and the tractor-trailer fatally departed the bridge. Investigations following the accident identified significant corrosion of the anchor bolts attaching the bridge railing to the bridge deck.

As a result of the information gathered during its investigation of the accident, the National Transportation Safety Board (NTSB) made recommendations to the Federal Highway Administration concerning Non-Destructive Evaluation of concrete bridge railings. One of these recommendations (H–10–18) is as follows:

> Expand the research and development of nondestructive evaluation technologies to develop bridge inspection methods that augment visual inspections; offer reliable measurement techniques; and are practical, both in terms of time and cost, for field inspection work; and promote the use of these technologies by bridge owners.

The barrier on the Preston Lane, Jr. Memorial Bridge was unique in that the anchor bolts connecting the barrier to the deck were exposed. This exposure allowed inspection of the remaining anchor bolts directly using ultrasonic testing. In contrast, most barriers have configurations where the steel anchorage is completely embedded in the deck and barrier. Most reinforced concrete barriers are anchored to the deck of a bridge or retaining wall using reinforcing steel protruding from the main structure or by anchored bars or bolts during retrofits. Corrosion of steel bars or bolts can weaken this attachment and reduce the capacity of the barrier. The most direct damage resulting from corrosion is the reduction of steel diameter and cross-sectional area. Steel corrosion in concrete is caused primarily by two reasons: chloride induced corrosion and carbonation induced corrosion. Barriers are generally located at or very near the gutter-line of a roadway and may have significant long-term exposure to corrosive deicing materials.

It is beyond the capacity of visual inspection to identify and evaluate concrete voids and corrosion of anchorage mechanisms embedded in concrete. A literature review revealed that some promising research has been done using NDE methods to evaluate reinforced concrete and the embedded steel reinforcement.

Effective corrosion detection methods are just one piece of the barrier and railing maintenance puzzle. Identification of when to use advanced NDE tools as well as to what level the capacity is likely impacted by the measured deterioration will be examined as a part of this project. In order to most effectively investigate the correct barrier and railing designs, it was noted that input from the state DOTs was required. Thus, a survey to determine what protocols for design, fabrication, installation, and inspection was created and should be disseminated to the 50 state DOTs and also to the DC and Puerto Rico DOTs.

Respondents: All 50 state DOTs and also DC and Puerto Rico DOTs. 52 total.

Frequency: Once.

Estimated Average Burden per Response: Approximately 2 hours to collect the necessary information and 1 hour to fill out the survey.

Estimated Total Annual Burden Hours: Approximately 156 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: February 11, 2013.

Michael Howell,

Information Collection Officer.

[FR Doc. 2013–03510 Filed 2–14–13; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans, that are final within the meaning of 23 U.S.C. § 139(*l*)(1). The actions relate to a proposed highway project on the West Mission Bay Drive crossing of the San Diego River flood control channel between West Mission Bay Drive/Sea World Drive intersection and the Sports Arena Boulevard/I–8 intersection in the County of San Diego, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before July 15, 2013. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Kevin Hovey, Senior Environmental Planner, Caltrans, 4050 Taylor Street, San Diego, CA 92110, 7 a.m.–3 p.m., 619–688–0240, *Kevin_Hovey@dot.ca.gov*.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans, has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: Improve the West Mission Bay Drive Bridge by removing the existing four-lane bridge and replacing it with two, new, three-lane, parallel bridge structures. The total length of the new bridge will be approximately 1,300 feet. The project is located within the City of San Diego and spans the San Diego River flood control channel between West Mission Bay Drive/Sea World Drive intersection and the Sports Arena Boulevard/I–8 intersection. The federal aide project number is BHLS–5004(049). The actions by the Federal agency, and the laws under which such actions were taken, are described in the Final Environmental Assessment (FEA) for the project, approved on 2/8/13, in the FHWA Finding of No Significant Impact (FONSI) issued on 2/8/13, and in other documents in the FHWA project records. The FEA, FONSI, and other project records are available by contacting Caltrans at the addresses provided above. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to

1. Council on Environmental Quality Regulations
2. National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 et seq.
3. Federal-Aid Highway Act of 1970, 23 U.S.C 109
4. MAP–21, the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141)
5. Clean Air Act Amendments of 1990 (CAAA)
6. Clean Water Act of 1977 and 1987
7. Federal Water Pollution Control Act of 1972 (see Clean Water Act of 1977 & 1987)
8. Federal Land Policy and Management Act of 1976 (Paleontological Resources)
9. Noise Control Act of 1972
10. Safe Drinking Water Act of 1944, as amended
11. Endangered Species Act of 1973
12. Executive Order 11990, Protection of Wetlands
13. Executive Order 13112, Invasive Species
14. Executive Order 13186, Migratory Birds
15. Fish and Wildlife Coordination Act of 1934, as amended
16. Migratory Bird Treaty Act
17. Water Bank Act Wetlands Mitigation Banks, ISTEA 1991, Sections 1006–1007
18. Wildflowers, Surface Transportation and Uniform Relocation Act of 1987 Section 130
19. Coastal Zone Management Act of 1972
20. Coastal Zone Management Act Reauthorization Amendments Of 1990
21. Executive Order 11988, Floodplain Management
22. Department of Transportation (DOT) Executive Order 5650.2—Floodplain Management and Protection (April 23, 1979)
23. Rivers and Harbors Appropriation Act of 1899, Sections 9 and 10
24. Title VI of the Civil Rights Act of 1964, as amended
25. Executive Order 12898, Federal Actions to Address Environmental Justice and Low-Income Populations

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: February 11, 2013.

Rebecca Bennett,

Director, Local Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. 2013–03535 Filed 2–14–13; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Unified Carrier Registration Plan Board of Directors Meeting

TIME AND DATE: The meeting will be held on February 21, 2013, from 12:00 noon to 3:00 p.m., Eastern Standard Time.

PLACE: This meeting will be open to the public via conference call. Any interested person may call 1–877–820–7831, passcode, 908048 to listen and participate in this meeting.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827–4565.

Issued on: February 11, 2013.

Larry W. Minor,

Associate Administrator, Office of Policy, Federal Motor Carrier Safety Administration.

[FR Doc. 2013–03671 Filed 2–13–13; 11:15 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket FTA–2013–0001]

Notice of Establishment of Emergency Relief Docket for Calendar Year 2013

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice

SUMMARY: The Federal Transit Administration (FTA) is establishing an Emergency Relief Docket for calendar year 2013 so grantees and subgrantees affected by national or regional emergencies may request relief from FTA administrative and statutory requirements. By this notice, FTA is establishing an Emergency Relief Docket for calendar year 2013.

FOR FURTHER INFORMATION CONTACT: Bonnie L. Graves, Attorney-Advisor, Legislation and Regulations Division, Office of Chief Counsel, Federal Transit Administration, 1200 New Jersey Ave. S.E., Room E56–306, Washington, DC 20590, phone: (202) 366–4011, fax: (202) 366–3809, or email, *Bonnie.Graves@dot.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to title 49 CFR part 601, subpart D, FTA is establishing the Emergency Relief Docket for calendar year 2013. The docket may be opened at the request of a grantee or subgrantee, or on the Administrator's own initiative. When the Emergency Relief Docket is opened, FTA will post a notice on its Web site, at www.fta.dot.gov. In addition, a notice will be posted in the docket.

In the event a grantee or subgrantee believes the Emergency Relief Docket should be opened and it has not been opened, that grantee or subgrantee may submit a petition in duplicate to the Administrator, via U.S. mail, to: Federal Transit Administration, 1200 New Jersey Ave. S.E., Washington, DC 20590; via telephone, at: (202) 366–4011; via fax, at (202) 366–3472, or via email, to *bonnie.graves@dot.gov,* requesting opening of the Docket for that emergency and including the information set forth below.

Section 5324(d) of title 49, U.S.C. provides that a grant awarded under section 5324 or under section 5307 or 5311 that is made to address an emergency shall be subject to the terms and conditions the Secretary determines are necessary. This language allows FTA to waive statutory, as well as administrative, requirements. Effective with calendar year 2013, recipients affected by an emergency or major disaster may request waivers of provisions of chapter 53 of title 49, U.S.C. when the requirement(s) will limit a recipient's or subrecipient's ability to respond to an emergency. Recipients must follow the procedures as set forth below when requesting a waiver of statutory or administrative requirements.

All petitions for relief from a provision of chapter 53 of title 49, U.S.C. or FTA administrative requirements must be posted in the docket in order to receive consideration by FTA. The docket is publicly accessible and can be accessed 24 hours a day, seven days a week, via the Internet at *www.regulations.gov.* Petitions may also be submitted by U.S. mail or by hand delivery to the DOT Docket Management Facility, 1200 New Jersey Ave. S.E., Room W12–140, Washington, DC 20590. Any grantee or subgrantee submitting petitions for relief or comments to the docket must include the agency name (Federal Transit Administration) and docket number FTA–2013–0001. Grantees and subgrantees making submissions to the docket by mail or hand delivery should submit two copies. Grantees and subgrantees are strongly encouraged to contact their FTA regional office and notify FTA of the intent to submit a petition to the docket.

In the event a grantee or subgrantee needs to request immediate relief and does not have access to electronic means to request that relief, the grantee or subgrantee may contact any FTA regional office or FTA headquarters and request that FTA staff submit the petition on its behalf.

A petition for relief shall:

(a) Identify the grantee or subgrantee and its geographic location;

(b) Identify the section of chapter 53 of title 49, U.S.C., or the FTA policy statement, circular, guidance document and/or rule from which the grantee or subgrantee seeks relief;

(c) Specifically address how a requirement in chapter 53 of title 49 U.S.C., or an FTA requirement in a policy statement, circular, agency guidance or rule will limit a grantee's or subgrantee's ability to respond to an emergency or disaster; and

(d) Specify if the petition for relief is one-time or ongoing, and if ongoing identify the time period for which the relief is requested. The time period may not exceed three months; however, additional time may be requested through a second petition for relief.

A petition for relief from administrative requirements will be conditionally granted for a period of three (3) business days from the date it is submitted to the Emergency Relief Docket. FTA will review the petition after the expiration of the three business days and review any comments submitted thereto. FTA may contact the grantee or subgrantee that submitted the request for relief, or any party that submits comments to the docket, to obtain more information prior to making a decision. FTA shall then post a decision to the Emergency Relief Docket. FTA's decision will be based on whether the petition meets the criteria for use of these emergency procedures, the substance of the request, and the comments submitted regarding the petition. If FTA does not respond to the request for relief to the docket within three business days, the grantee or subgrantee may assume its petition is granted for a period not to exceed three months until and unless FTA states otherwise.

A petition for relief from statutory requirements will not be conditionally granted and requires a written decision from the FTA Administrator.

Pursuant to section 604.2(f) of FTA's charter rule (73 FR 2325, Jan. 14, 2008), grantees and subgrantees may assist with evacuations or other movement of people that might otherwise be considered charter transportation when that transportation is in response to an emergency declared by the President, governor, or mayor, or in an emergency requiring immediate action prior to a formal declaration, even if a formal declaration of an emergency is not eventually made by the President, governor or mayor. Therefore, a request for relief is not necessary in order to provide this service. However, if the emergency lasts more than 45 calendar days, the grantee or subgrantee shall follow the procedures set out in this notice.

FTA reserves the right to reopen any docket and reconsider any decision made pursuant to these emergency procedures based upon its own initiative, based upon information or comments received subsequent to the three business day comment period, or at the request of a grantee or subgrantee upon denial of a request for relief. FTA shall notify the grantee or subgrantee if it plans to reconsider a decision. FTA decision letters, either granting or denying a petition, shall be posted in the Emergency Relief Docket and shall reference the document number of the petition to which it relates.

Issued in Washington, DC, this 11th day of February 2013.

Therese W. McMillan,

Deputy Administrator.

[FR Doc. 2013–03616 Filed 2–14–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is forwarded to the Office of Management and Budget (OMB) for review and comments. The ICR describes the nature of the information collection and its expected burden. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on December 4, 2012 and comments were due by February 4, 2013. No comments were received.

DATES: Comments should be submitted on or before March 18, 2013.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 202–366–0760; or email *michael.hokana@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Jones Act Vessel Availability Determinations.

OMB Control Number: 2133–0545

Type of Request: Extension of currently approved collection.

Abstract: The information is needed in order for the Maritime Administrator to make a timely and informed decision on the availability of coastwise qualified vessels in support of a request from the Department of Homeland Security prior to the final decision on granting a waiver request under 46 U.S.C. Section 501(b). The information will be specifically used to determine if there are coastwise qualified vessels available for a certain requirement.

Affected Public: Coastwise qualified vessel owners, operators, charterers, brokers and representatives.

Annual Estimated Burden Hours: 383 hours.

Forms: MA–1075, 1075A.

ADDRESSES: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street NW., Washington, DC, 20503, Attention: MARAD Desk Officer. Alternatively, comments may be sent via email to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: *oira.submissions@omb.eop.gov.*

Comments Are Invited On: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it receives it within 30 days of publication.

(Authority: 49 CFR 1.93.)

Dated: February 11, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–03506 Filed 2–14–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013 0007]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel MOONSPINNER; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 18, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0007. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MOONSPINNER is:

Intended Commercial Use of Vessel: Private vessel charters.

Geographic Region: California.

The complete application is given in DOT docket MARAD–2013–0007 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: February 11, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–03504 Filed 2–14–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013 0010]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel EVEREST; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 18, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0010. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel EVEREST is:

Intended Commercial Use of Vessel: ''A limited number of overnight charters on the east coast of the US and possibly 2 east coast transits per year.''

Geographic Region: Florida, Georgia, South Carolina, North Carolina, Virginia, Maryland, Delaware, Washington DC, Pennsylvania, New Jersey, New York, Connecticut, Massachusetts, Rhode Island, Vermont, New Hampshire, Maine, Alabama, Mississippi, Louisiana, Texas.

The complete application is given in DOT docket MARAD–2013–0010 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: February 11, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–03507 Filed 2–14–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013 0008]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel KAI ORA; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 18, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0008. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel KAI ORA is:

Intended Commercial Use of Vessel: ''Skippered Charter in and around San Diego. Maximum Range: Near Coastal from Santa Barbara to Ensenada, Mexico.''

Geographic Region: California.

The complete application is given in DOT docket MARAD–2013–0008 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: February 11, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–03509 Filed 2–14–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2013 0009]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel IL MORO DI VENEZIA; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before March 18, 2013.

ADDRESSES: Comments should refer to docket number MARAD–2013–0009. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Williams, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W23–453, Washington, DC 20590. Telephone 202–366–0903, Email *Linda.Williams@dot.gov.*

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel IL MORO DI VENEZIA is:

Intended Commercial Use of Vessel: ''Sailing charters''.

Geographic Region: California.

The complete application is given in DOT docket MARAD–2013–0009 at http://www.regulations.gov. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: February 11, 2013.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2013–03508 Filed 2–14–13; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2013–0018]

Reports, Forms, and Record keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before April 16, 2013.

ADDRESSES: You may submit comments [identified by DOT Docket No. NHTSA–2013–0018] by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. Telephone: 1–800–647–5527.
- *Fax:* 202–493–2251

Instructions: All submissions must include the agency name and docket number for this proposed collection of information. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to http://www.regulations.gov. or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Shirlene Ball, NHTSA 1200 New Jersey Avenue SE., W51–217, NPO 420, Washington, DC 20590. Mrs. Ball's telephone number is (202) 366–2245.

Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performanceb of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

Title: Air Bag Deactivation.

OMB Control Number: 2127–0588.

Affected Public: Private individuals, fleet owners and lessees, motor vehicle dealers, repair business.

Abstract: If a private individual or lessee wants to install an air bag on-off switch to turn-off either or both frontal air bags, they must complete Form OMB 2127–0588 to certify certain statements regarding use of the switch. The dealer or business must, in turn, submit the completed forms to NHTSA within seven days. The submission of the completed forms by the dealers and repair business to NHTSA, as required, will serve the agency several purposes. They will aid the agency in monitoring the number of authorization requests submitted and the pattern in claims of risk group membership. The completed forms will enable the agency to determine whether the dealers and repair business are complying with the terms of the exemption, which include a requirement that the dealers and repair businesses accept only fully completed forms. Finally, submission of the completed forms to the agency will promote honesty and accuracy in the filling out of the forms by vehicle owners. The air bag on-off switches are installed only in vehicles in which the risk of harm needs to be minimized on a case-by-case basis.

Estimated Annual Burden: 375 hours.

Estimated Number of Respondents: 750.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Kevin Mahoney,

Director, Corporate Customer Services.

[FR Doc. 2013–03424 Filed 2–14–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 12, 2013.

DATES: Comments should be received on or before March 18, 2013 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov*, or the entire information collection request maybe found at *www.reginfo.gov.*

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

Internal Revenue Service (IRS)

OMB Number: 1545–0984.
Type of Review: Extension without change of a currently approved collection.
Title: Low-Income Housing Credit.
Form: 8586.
Abstract: The Tax Reform Act of 1986 (Code section 42) permits owners of residential rental projects providing low-income housing to claim a credit against income tax for part of the cost of constructing or rehabilitating such low-income housing. Form 8586 is used by taxpayers to compute the credit and by IRS to verify that the correct credit has been claimed.
Affected Public: Private Sector: Businesses and other for-profits.
Estimated Total Burden Hours: 68,517.
OMB Number: 1545–1440.
Type of Review: Extension without change of a currently approved collection.
Title: TD 8611—Conduit Arrangements Regulations—Final (INTL–64–93).
Abstract: This document contains regulations relating to when the area director may recharacterize a financing arrangement as a conduit arrangement. Such recharacterization will affect the amount of withholding tax due on financing transactions that are part of the financing arrangement. These regulations will affect withholding agents and foreign investors.
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Total Burden Hours: 10,000.
OMB Number: 1545–1846.
Type of Review: Extension without change of a currently approved collection.
Title: Revenue Procedure 2003–48, Update of Checklist Questionnaire Regarding Requests for Spin-Off Rulings.
Abstract: This revenue procedure updates Rev. Proc. 96–30, which sets forth in a checklist questionnaire the information that must be included in a request for ruling under section 355. This revenue procedure updates information that taxpayers must provide in order to receive letter rulings under section 355. This information is required to determine whether a taxpayer would qualify for non-recognition treatment.
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Total Burden Hours: 36,000.
OMB Number: 1545–1276.
Type of Review: Extension without change of a currently approved collection.
Title: TD 8458—Real Estate Mortgage Investment Conduits (FI–88–86).
Abstract: Section 860E(e) imposes an excise tax on the transfer of a residual interest in a REMIC to a disqualified party. The tax must be paid by the transferor of a pass-thru entity of which the disqualified party is an interest holder.
Affected Public: Private Sector: Businesses or other for-profits.
Estimated Total Burden Hours: 525.
OMB Number: 1545–2018.
Type of Review: Extension without change of a currently approved collection.
Title: Revenue Procedure 2006–31, Revocation of Election filed under I.R.C. 83(b).
Abstract: This revenue procedure sets forth the procedures to be followed by individuals who wish to request permission to revoke the election they made under section 83(b).
Affected Public: Individuals or Households.
Estimated Total Burden Hours: 400.
OMB Number: 1545–2166.
Type of Review: Extension without change of a currently approved collection.
Title: Application for Group or Pooled Trust Ruling.
Form: 5316.
Abstract: Group/pooled trust sponsors file this form to request a determination letter from the IRS for a determination that the trust is a group trust arrangement as described in Rev. Rul. 81–100, 1981–1 C.B. 326 as modified and clarified by Rev. Rul. 2004–67, 2004–28 I.R.B.
Affected Public: State, Local, and Tribal Governments.
Estimated Total Burden Hours: 3,800.

Dawn D. Wolfgang,
Treasury PRA Clearance Officer.

[FR Doc. 2013–03563 Filed 2–14–13; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities; Information Collection Renewal; Comment Request; Funding and Liquidity Risk Management

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995.

Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information and to allow 60 days for public comment in response to the notice.

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning renewal of its information collection titled, ''Funding and Liquidity Risk Management.''

DATES: Comments must be received by April 16, 2013.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0244, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11,Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the information collection from Johnny Vilela or Mary H. Gottlieb, OCC

Clearance Officers, (202) 649–5490, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mailstop 9W–11, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the proposed collection of information set forth in this document.

The OCC is proposing to extend OMB approval of the following information collection:

Title of Information Collection: Funding and Liquidity Risk Management.

OMB Control No.: 1557–0244.

Type of Review: Extension, without revision, of a currently approved collection.

Description: The Interagency Policy Statement on Funding and Liquidity Risk Management [1] (Policy Statement) summarizes the principles of sound liquidity risk management that the agencies have issued in the past [2] and, where appropriate, harmonizes these principles with the international statement issued by the Basel Committee on Banking Supervision titled ''Principles for Sound Liquidity Risk Management and Supervision.'' [3] The Policy Statement emphasizes supervisory expectations for all depository institutions including banks, savings associations, and credit unions.

Section 14 of the Policy Statement provides that financial institutions should consider liquidity costs, benefits, and risks in strategic planning and budgeting processes. Significant business activities should be evaluated for liquidity risk exposure as well as profitability. More complex and sophisticated financial institutions should incorporate liquidity costs, benefits, and risks in the internal product pricing, performance measurement, and new product approval process for all material business lines, products, and activities. Incorporating the cost of liquidity into these functions should align the risk-taking incentives of individual business lines with the liquidity risk exposure their activities create for the institution as a whole. The quantification and attribution of liquidity risks should be explicit and transparent at the line management level, and should include consideration of how liquidity would be affected under stressed conditions.

Section 20 of the Policy Statement requires that liquidity risk reports provide aggregate information with sufficient supporting detail to enable management to assess the sensitivity of the institution to changes in market conditions, its own financial performance, and other important risk factors. Institutions also should report on the use of and availability of government support, such as lending and guarantee programs, and implications on liquidity positions, particularly since these programs are generally temporary or reserved as a source for contingent funding.

Affected Public: Businesses or other for-profit.

Estimated Burden:

The OCC estimates the burden of this collection of information on national banks and Federal savings associations as follows:

Estimated Number of Respondents: 1,833 total (13 large (over $100 billion in assets), 47 mid-size ($10–$100 billion), 1,773 small (less than $10 billion).

Estimated Burden under Section 14: 360 hours per large respondent, 120 hours per mid-size respondent, and 40 hours per small respondent.

Estimated Burden under Section 20: 2 hours per month.

Total Estimated Burden Hours: 125,232 hours.

Comments: Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the information collections are necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of the services necessary to provide the required information.

Dated: February 8, 2013.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2013–03502 Filed 2–14–13; 8:45 am]

BILLING CODE P

[1] 75 FR 13656 (Mar. 22, 2010).

[2] For national banks and Federal savings associations, see the *Comptroller's Handbook on Liquidity.* For state member banks and bank holding companies, see the Federal Reserve's *Commercial Bank Examination Manual* (section 4020), *Bank Holding Company Supervision Manual* (section 4010), and *Trading and Capital Markets Activities Manual* (section 2030). For state non-member banks, see the FDIC's *Revised Examination Guidance for Liquidity and Funds Management* (Trans. No. 2002–01) (Nov. 19, 2001), and Financial Institution Letter 84–2008, *Liquidity Risk Management* (August 2008). For Federally insured credit unions, see Letter to Credit Unions No. 02–CU–05, Examination Program Liquidity Questionnaire (March 2002). Also see Basel Committee on Banking Supervision, ''Principles for Sound Liquidity Risk Management and Supervision'' (September 2008).

[3] Basel Committee on Banking Supervision, ''Principles for Sound Liquidity Risk Management and Supervision,'' September 2008. See *www.bis.org/publ/bcbs144.htm.* Federally insured credit unions are not directly referenced in the principles issued by the Basel Committee.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Consumer Protections for Depository Institution Sales of Insurance

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995.

Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information and to allow 60 days for public comment in response to the notice.

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning renewal of its information collection titled, ''Consumer Protections for Depository Institution Sales of Insurance.''

DATES: Comments must be received by April 16, 2013.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0220, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: You may request additional information or a copy of the collection from Johnny Vilela or Mary H. Gottlieb, OCC Clearance Officers, (202) 649–5490, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the proposed collection of information set forth in this document.

The OCC is proposing to extend OMB approval of the following information collection:

Title: Consumer Protections for Depository Institution Sales of Insurance.

OMB Control No.: 1557–0220.

Type of Review: Extension, without revision, of a currently approved collection.

Description: This information collection requires national banks, Federal savings associations, and other covered persons involved in insurance sales, as defined in 12 CFR 14.20(f) and 136.20, to make two separate disclosures to consumers. Under 12 CFR 14.40 and 136.40, a national bank, Federal savings association, or other covered person must prepare and provide, orally and in writing: (1) Certain insurance disclosures to consumers before the completion of the initial sale of an insurance product or annuity to the consumer; and (2) certain credit disclosures at the time of the consumer's application for the extension of credit (if insurance products or annuities are sold, solicited, advertised, or offered in connection with an extension of credit).

Affected Public: Businesses or other for-profit.

Estimated Burden: The OCC estimates the burden of this collection of information as follows:

Estimated Number of Respondents: 812.

Estimated Number of Responses: 812.

Total Estimated Burden Hours: 4,060 hours.

Comments: Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of the services necessary to provide the required information.

Dated: February 8, 2013.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2013–03503 Filed 2–14–13; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of One (1) Individual and Four (4) Entities Pursuant to Executive Order 13628 of October 9, 2012

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one (1) individual and four (4) entities designated on February 6, 2013, as persons whose property and interests in property are blocked pursuant to Executive Order 13628 of October 9, 2012, ''Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Threat Reduction and Syria Human Rights Act of 2012 and Additional Sanctions With Respect to Iran.''

DATES: The designation by the Director of OFAC of the one (1) individual and four (4) entities identified in this notice, pursuant to Executive Order 13628 of October 9, 2012, is effective February 6, 2013.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance and Evaluation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on demand service tel.: (202) 622–0077.

Background

On October 9, 2012, the President issued Executive Order 13628, ''Authorizing the Implementation of Certain Sanctions Set Forth in the Iran Threat Reduction and Syria Human Rights Act of 2012 and Additional Sanctions With Respect to Iran'' (the ''Order''), pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), the Iran Sanctions Act of 1996 (Pub. L. 104–172) (50 U.S.C. 1701 note), as amended, the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195) (22 U.S.C. 8501 et seq.), as amended, the Iran Threat Reduction and Syria Human Rights Act of 2012 (Pub. L. 112–158), Section 212(f) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1182(f)), and Section 301 of title 3, United States Code.

Section 3 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, of persons determined by the Secretary of the Treasury, in consultation with, or at the recommendation of, the Secretary of State, to satisfy certain criteria set forth in the Order.

On February 6, 2013, the Director of OFAC, in consultation with or at the recommendation of, the Secretary of State, designated, pursuant to Section 3 of the Order, one (1) individual and four (4) entities whose names have been added to the list of Specially Designated Nationals and Blocked Persons and whose property and interests in property are blocked. The listing for these individuals and entities is below.

Individuals

1. ZARGHAMI, Ezzatollah (a.k.a. ZARGHAMI, Ezatollah); DOB 1959; POB Dezful, Khuzentan Province, Iran; Title Director, Islamic Republic of Iran Broadcasting (individual) [IRAN–TRA].

Entities

1. IRANIAN COMMUNICATIONS REGULATORY AUTHORITY (a.k.a. ''SAZMAN–E TANZIM MOGHARARAT''), Ministry of Information and Communications Technology, P.O. Box 15598–4415, 1631713761, Tehran, Iran; Web site *http://www.cra.ir* [IRAN–TRA].
2. IRANIAN CYBER POLICE (a.k.a. FATA POLICE); Web site *http://www.cyberpolice.ir* [IRAN–TRA].
3. ISLAMIC REPUBLIC OF IRAN BROADCASTING (a.k.a. IRIB; a.k.a. ISLAMIC REPUBLIC OF IRAN BROADCASTING ORG.; a.k.a. NATIONAL IRANIAN RADIO AND TELEVISION), Jamejam Street, Valiasr Avenue, Tehran, Iran; Satellite Department, IRIB, Jame Jam St., Tehran, Iran; Department of IT–IRIB, P.O. Box 19395–333, Jaame Jam. St, Valiasr Ave, Tehran, Iran; IT Department, Fanni Building No 3, Jame jam, Valiasr St., Tehran, Iran; 200 Mosaddegh Avenue, Jaame Jam Street, Vali Asr Ave, P.O. Box 1333, Tehran 193933333, Iran; Fatemi Building, P.O. Box 15875/4333, Tehran, Iran; Web site *www.irib.ir;* alt. Web site *http://iransat.irib.ir;* Registration ID 1792 [IRAN–TRA].
4. IRAN ELECTRONICS INDUSTRIES (a.k.a. IEI; a.k.a. SAIRAN; a.k.a. SANAYE ELECTRONIC IRAN; a.k.a. SASAD IRAN ELECTRONICS INDUSTRIES; a.k.a. SHERKAT SANAYEH ELECTRONICS IRAN), P.O. Box 19575–365, Shahied Langari Street, Noboniad Sq, Pasdaran Ave, Saltanad Abad, Tehran, Iran; P.O. Box 71365–1174, Hossain Abad/Ardakan Road, Shiraz, Iran; Hossein Abad/Ardakan Road, P.O. Box 555, Shiraz 71365/1174, Iran; Shahid Langari Street, Nobonyad Square, Tehran, Iran; Web site *www.ieimil.ir;* alt. Web site *www.ieicorp.com;* Business Registration Document # 829 [NPWMD] [IFSR] [IRAN–TRA].

Dated: February 6, 2013.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2013–03552 Filed 2–14–13; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, March 12, 2013.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–834–2201.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will be held Tuesday, March 12, 2013, at 2:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Audrey Y. Jenkins. For more information please contact Ms. Audrey Y. Jenkins at 1–888–912–1227 or 718–834–2201, or write TAP Office, 100 Myrtle Avenue 7th, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org*.

The agenda will include various IRS Issues.

Dated: February 11, 2013.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2013–03511 Filed 2–14–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, March 13, 2013.

FOR FURTHER INFORMATION CONTACT: Timothy Shepard at 1–888–912–1227 or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be held Wednesday, March 13, 2013, at

12 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Timothy Shepard. For more information please contact Mr. Shepard at 1–888–912–1227 or 206–220–6095, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174, or contact us at the Web site: *http://www.improveirs.org*.

The agenda will include various IRS Issues.

Dated: February 11, 2013.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2013–03515 Filed 2–14–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, March 13, 2013.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–834–2203.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be held Wednesday, March 13, 2013 at 11:00 a.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Knispel. For more information please contact Ms. Knispel at 1–888–912–1227 or 718–834–2203, or write TAP Office, 2 MetroTech Center, 100 Myrtle Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include various IRS issues.

Dated: February 11, 2013.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2013–03513 Filed 2–14–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, March 27, 2013.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert at 1–888–912–1227 or (515) 564–6638.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Wednesday, March 27, 2013 at 2:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Susan Gilbert. For more information please contact Ms. Gilbert at 1–888–912–1227 or (515) 564–6638 or write: TAP Office, 210 Walnut Street, Stop 5115, Des Moines, IA 50309 or contact us at the Web site: *http://www.improveirs.org*.

The agenda will include various IRS topics.

Dated: February 11, 2013.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2013–03514 Filed 2–14–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, March 19, 2013.

FOR FURTHER INFORMATION CONTACT: Marianne Dominguez at 1–888–912–1227 or 954–423–7978.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be held Tuesday, March 19, 2013 at 11:00 a.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Dominguez. For more information please contact Ms. Dominguez at 1–888–912–1227 or 954–423–7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org*.

The agenda will include various IRS issues.

Dated: February 11, 2013.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2013–03512 Filed 2–14–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, March 21, 2013.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley or Patti Robb at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Thursday, March 21, 2013 at 2:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Ellen Smiley or Ms. Patti Robb. For more information please contact Ms. Smiley or Ms. Robb at 1–888–912–1227 or 414–231–2360, or write TAP Office, Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include various IRS issues.

Dated: February 11, 2013.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2013–03516 Filed 2–14–13; 8:45 am]

BILLING CODE 4830–01–P

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Part II

Bureau of Consumer Financial Protection

12 CFR Part 1026

Loan Originator Compensation Requirements Under the Truth in Lending Act (Regulation Z); Final Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB–2012–0037]

RIN 3170–AA13

Loan Originator Compensation Requirements Under the Truth in Lending Act (Regulation Z)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretations.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is amending Regulation Z to implement amendments to the Truth in Lending Act (TILA) made by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The final rule implements requirements and restrictions imposed by the Dodd-Frank Act concerning loan originator compensation; qualifications of, and registration or licensing of loan originators; compliance procedures for depository institutions; mandatory arbitration; and the financing of single-premium credit insurance. The final rule revises or provides additional commentary on Regulation Z's restrictions on loan originator compensation, including application of these restrictions to prohibitions on dual compensation and compensation based on a term of a transaction or a proxy for a term of a transaction, and to recordkeeping requirements. The final rule also establishes tests for when loan originators can be compensated through certain profits-based compensation arrangements. At this time, the Bureau is not prohibiting payments to and receipt of payments by loan originators when a consumer pays upfront points or fees in the mortgage transaction. Instead the Bureau will first study how points and fees function in the market and the impact of this and other mortgage-related rulemakings on consumers' understanding of and choices with respect to points and fees. This final rule is designed primarily to protect consumers by reducing incentives for loan originators to steer consumers into loans with particular terms and by ensuring that loan originators are adequately qualified.

DATES: The amendments to § 1026.36(h) and (i) are effective on June 1, 2013. All other provisions of the rule are effective on January 10, 2014.

FOR FURTHER INFORMATION CONTACT: Daniel C. Brown, Nora Rigby, and Michael G. Silver, Counsels; Krista P. Ayoub, and R. Colgate Selden, Senior Counsels; Charles Honig, Managing Counsel; Office of Regulations, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Summary of the Final Rule

The mortgage market crisis focused attention on the critical role that loan officers and mortgage brokers play in the loan origination process. Because consumers generally take out only a few home loans over the course of their lives, they often rely heavily on loan officers and brokers to guide them. But prior to the crisis, training and qualification standards for loan originators varied widely, and compensation was frequently structured to give loan originators strong incentives to steer consumers into more expensive loans. Often, consumers paid loan originators an upfront fee without realizing that the creditors in the transactions also were paying the loan originators commissions that increased with the interest rate or other terms.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) expanded on previous efforts by lawmakers and regulators to strengthen loan originator qualification requirements and regulate industry compensation practices. The Bureau of Consumer Financial Protection (Bureau) is issuing new rules to implement the Dodd-Frank Act requirements, as well as to revise and clarify existing regulations and commentary on loan originator compensation. The rules also implement Dodd-Frank Act provisions that prohibit certain arbitration agreements and the financing of certain credit insurance in connection with a mortgage loan.

The final rule revises Regulation Z to implement amendments to the Truth in Lending Act (TILA). It contains the following key elements:

Prohibition Against Compensation Based on a Term of a Transaction or Proxy for a Term of a Transaction. Regulation Z already prohibits basing a loan originator's compensation on ''any of the transaction's terms or conditions.'' The Dodd-Frank Act codifies this prohibition. The final rule implements the Dodd-Frank Act and clarifies the scope of the rule as follows:

- The final rule defines ''a term of a transaction'' as ''any right or obligation of the parties to a credit transaction.'' This means, for example, that a mortgage broker cannot receive compensation based on the interest rate of a loan or on the fact that the loan officer steered a consumer to purchase required title insurance from an affiliate of the broker, since the consumer is obligated to pay interest and the required title insurance in connection with the loan.
- To prevent evasion, the final rule prohibits compensation based on a ''proxy'' for a term of a transaction. The rule also further clarifies the definition of a proxy to focus on whether: (1) The factor consistently varies with a transaction term over a significant number of transactions; and (2) the loan originator has the ability, directly or indirectly, to add, drop, or change the factor in originating the transaction.
- To prevent evasion, the final rule generally prohibits loan originator compensation from being reduced to offset the cost of a change in transaction terms (often called a ''pricing concession''). However, the final rule allows loan originators to reduce their compensation to defray certain unexpected increases in estimated settlement costs.
- To prevent incentives to ''up-charge'' consumers on their loans, the final rule generally prohibits loan originator compensation based upon the profitability of a transaction or a pool of transactions. However, subject to certain restrictions, the final rule permits certain bonuses and retirement and profit-sharing plans to be based on the terms of multiple loan originators' transactions. Specifically, the funds can be used for: (1) Contributions to or benefits under certain designated tax-advantaged retirement plans, such as 401(k) plans and certain pension plans; (2) bonuses and other types of non-deferred profits-based compensation if the individual loan originator originated ten or fewer mortgage transactions during the preceding 12 months; and (3) bonuses and other types of non-deferred profits-based compensation that does not exceed 10 percent of the individual loan originator's total compensation.

Prohibition Against Dual Compensation. Regulation Z already provides that where a loan originator receives compensation directly from a consumer in connection with a mortgage loan, no loan originator may receive compensation from another person in connection with the same transaction. The Dodd-Frank Act codifies this prohibition, which was designed to address consumer confusion over mortgage broker loyalties where the brokers were receiving payments both from the consumer and the creditor. The final rule implements this restriction but provides an exception to allow mortgage brokers to pay their employees or contractors commissions, although the commissions cannot be based on the terms of the loans that they originate.

No Prohibition on Consumer Payment of Upfront Points and Fees. Section 1403 of the Dodd-Frank Act contains a section that would generally have prohibited consumers from paying upfront points or fees on transactions in which the loan originator compensation is paid by a person other than the consumer (either to the creditor's own employee or to a mortgage broker). However, the Dodd-Frank Act also authorizes the Bureau to waive or create exemptions from the prohibition on upfront points and fees if the Bureau determines that doing so would be in the interest of consumers and in the public interest.

The Bureau had proposed to waive the ban so that creditors could charge upfront points and fees in connection with a mortgage loan, so long as they made available to consumers an alternative loan that did not include upfront points and fees. The proposal was designed to facilitate consumer shopping, enhance consumer decision-making, and preserve consumer choice and access to credit. The Bureau has decided not to finalize this part of the proposal at this time, however, because of concerns that it would have created consumer confusion and other negative outcomes. The Bureau has decided instead to issue a complete exemption to the prohibition on upfront points and fees pursuant to its exemption authority under section 1403 and other authority while it scrutinizes several crucial issues relating to the proposal's design, operation, and possible effects in a mortgage market undergoing regulatory overhaul. The Bureau is planning consumer testing and other research to understand how new Dodd-Frank Act requirements affect consumers' understanding of and choices with respect to points and fees, so that the Bureau can determine whether further regulation is appropriate to facilitate consumer shopping and enhanced decision-making while protecting access to credit.

Loan Originator Qualifications and Identifier Requirements. The Dodd-Frank Act imposes a duty on individual loan officers, mortgage brokers, and creditors to be ''qualified'' and, when applicable, registered or licensed to the extent required under State and Federal law. The final rule imposes duties on loan originator organizations to make sure that their individual loan originators are licensed or registered as applicable under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) and other applicable law. For loan originator employers whose employees are not required to be licensed, including depository institutions and bona fide nonprofits, the rule requires them to: (1) Ensure that their loan originator employees meet character, fitness, and criminal background standards similar to existing SAFE Act licensing standards; and (2) provide training to their loan originator employees that is appropriate and consistent with those loan originators' origination activities. The final rule contains special provisions with respect to criminal background checks and the circumstances in which a criminal conviction is disqualifying, and with respect to situations in which a credit check on a loan originator is required.

The final rule also implements a Dodd-Frank Act requirement that loan originators provided their unique identifiers under the Nationwide Mortgage Licensing System and Registry (NMLSR) on loan documents. Accordingly, mortgage brokers, creditors, and individual loan originators that are primarily responsible for a particular origination will be required to list on enumerated loan documents their NMLSR unique identifiers (NMLSR IDs), if any, along with their names.

Prohibition on Mandatory Arbitration Clauses and Single Premium Credit Insurance. The final rule also contains language implementing two other Dodd-Frank Act provisions concerning mortgage loan originations. The first prohibits the inclusion of clauses requiring the consumer to submit disputes concerning a residential mortgage loan or home equity line of credit to binding arbitration. It also prohibits the application or interpretation of provisions of such loans or related agreements so as to bar a consumer from bringing a claim in court in connection with any alleged violation of Federal law. The second provision prohibits the financing of any premiums or fees for credit insurance (such as credit life insurance) in connection with a consumer credit transaction secured by a dwelling, but allows credit insurance to be paid for on a monthly basis.

Other Provisions. The final rule also extends existing recordkeeping requirements concerning loan originator compensation so that they apply to both creditors and mortgage brokers for three years. The rule also clarifies the definition of ''loan originator'' for purposes of the compensation and qualification rules, including exclusions for certain employees of manufactured home retailers, servicers, seller financers, and real estate brokers; management, clerical, and administrative staff; and loan processors, underwriters, and closers.

II. Background

A. The Mortgage Market

Overview of the Market and the Mortgage Crisis

The mortgage market is the single largest market for consumer financial products and services in the United States, with approximately $9.9 trillion in mortgage loans outstanding.[1] During the last decade, the market went through an unprecedented cycle of expansion and contraction that was fueled in part by the securitization of mortgages and creation of increasingly sophisticated derivative products. So many other parts of the American financial system were drawn into mortgage-related activities that, when the housing market collapsed in 2008, it sparked the most severe recession in the United States since the Great Depression.[2]

The expansion in this market is commonly attributed to both particular economic conditions (including an era of low interest rates and rising housing prices) and to changes within the industry. Interest rates dropped significantly—by more than 20 percent—from 2000 through 2003.[3] Housing prices increased dramatically—about 152 percent—between 1997 and 2006.[4] Driven by the decrease in interest rates and the increase in housing prices, the volume of refinancings increased rapidly, from about 2.5 million loans in 2000 to more than 15 million in 2003.[5]

Growth in the mortgage loan market was particularly pronounced in what are known as ''subprime'' and ''Alt-A'' products. Subprime products were sold

[1] Fed. Reserve Sys., *Flow of Funds Accounts of the United States,* at 67 tbl.L.10 (2012), *available at http://www.federalreserve.gov/releases/z1/Current/z1.pdf* (as of the end of the third quarter of 2012).

[2] *See* Thomas F. Siems, *Branding the Great Recession,* Fin. Insights (Fed. Reserve Bank of Dall.) May 13, 2012, at 3, *available at http://www.dallasfed.org/assets/documents/banking/firm/fi/fi1201.pdf* (stating that the great recession ''was the longest and deepest economic contraction, as measured by the drop in real GDP, since the Great Depression.'').

[3] *See* U.S. Dep't of Hous. & Urban Dev., *An Analysis of Mortgage Refinancing, 2001–2003,* at 2 (2004) (''An Analysis of Mortgage Refinancing, 2001–2003''), *available at www.huduser.org/Publications/pdf/MortgageRefinance03.pdf*; Souphala Chomsisengphet & Anthony Pennington-Cross, *The Evolution of the Subprime Mortgage Market,* 88 Fed. Res. Bank of St. Louis Rev. 31, 48 (2006), *available at http://research.stlouisfed.org/publications/review/article/5019.*

[4] U.S. Fin. Crisis Inquiry Comm'n, *The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States* 156 (Official Gov't ed. 2011) (''FCIC Report''), *available at http://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf.*

[5] An Analysis of Mortgage Refinancing, 2001–2003, at 1.

primarily to borrowers with poor or no credit history, although some borrowers who would have qualified for ''prime'' loans were steered into subprime loans instead.[6] The Alt-A category of loans permitted borrowers to take out mortgage loans while providing little or no documentation of income or other evidence of repayment ability. Because these loans involved additional risk, they were typically more expensive to borrowers than ''prime'' mortgages, although many of them had very low introductory interest rates. In 2003, subprime and Alt-A origination volume was almost $400 billion; in 2006, it had reached $1 trillion.[7]

So long as housing prices were continuing to increase, it was relatively easy for borrowers to refinance their existing loans into more affordable products to avoid interest rate resets and other adjustments. When housing prices began to decline in 2005, refinancing became more difficult and delinquency rates on these subprime and Alt-A products increased dramatically.[8] More and more consumers, especially those with subprime and Alt-A loans, were unable or unwilling to make their mortgage payments. An early sign of the mortgage crisis was an upswing in early payment defaults—generally defined as borrowers being 60 or more days delinquent within the first year. Prior to 2006, 1.1 percent of mortgages would end up 60 or more days delinquent within the first year.[9] Taking a more expansive definition of early payment default to include 60 days delinquent within the first two years, this figure was double the historic average during 2006, 2007, and 2008.[10] In 2006, 2007, and 2008, 2.3 percent, 2.1 percent, and 2.3 percent of mortgages ended up 60 or more days delinquent within the first two years, respectively. In addition, as the economy worsened, the rates of serious delinquency (90 or more days past due or in foreclosure) for the subprime and Alt-A products began a steep increase from approximately 10 percent in 2006, to 20 percent in 2007, to more than 40 percent in 2010.[11]

The impact of this level of delinquencies was severe on creditors who held loans on their books and on private investors who purchased loans directly or through securitized vehicles. Prior to and during the housing bubble, the evolution of the securitization of mortgages attracted increasing involvement from financial institutions that were not directly involved in the extension of credit to consumers and from investors worldwide. Securitization of mortgages allows originating creditors to sell off their loans (and reinvest the funds earned in making new ones) to investors who want an income stream over time. Securitization had been pioneered by what are now called government-sponsored enterprises (GSEs), including the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac). But by the early 2000s, large numbers of private financial institutions were deeply involved in creating increasingly complex mortgage-related investment vehicles through securities and derivative products. The private securitization-backed subprime and Alt-A mortgage market ground to a halt in 2007 in the face of the rising delinquencies on subprime and Alt-A products.[12]

Six years later, the United States continues to grapple with the fallout. The fall in housing prices is estimated to have resulted in about $7 trillion in household wealth losses.[13] In addition, distressed homeownership and foreclosure rates remain at unprecedented levels.[14]

Response and Government Programs

In light of these conditions, the Federal Government began providing support to the mortgage markets in 2008 and continues to do so at extraordinary levels today. The Housing and Economic Recovery Act of 2008 (HERA), which became effective on October 1, 2008, provided both new safeguards and increased regulation for Fannie Mae and Freddie Mac, as well as provisions to assist troubled borrowers and the hardest hit communities. Fannie Mae and Freddie Mac, which supported the mainstream mortgage market, experienced heavy losses and were placed in conservatorship by the Federal government in 2008 to support the collapsing mortgage market.[15] Because private investors have withdrawn from the mortgage securitization market and there are no other effective secondary market mechanisms in place, the GSEs' continued operations help ensure that the secondary mortgage market continues to function and to assist consumers in obtaining new mortgages or refinancing existing mortgages. The Troubled Asset Relief Program (TARP), created to implement programs to stabilize the financial system during the financial crisis, was authorized through the Emergency Economic Stabilization Act of 2008 (EESA), as amended by the American Recovery and Reinvestment Act of 2009, and includes programs to help struggling homeowners avoid foreclosure.[16] Since 2008, several other

[6] For example, the Federal Reserve Board on July 20, 2011, issued a consent cease and desist order and assessed an $85 million civil money penalty against Wells Fargo & Company of San Francisco, a registered bank holding company, and Wells Fargo Financial, Inc., of Des Moines. The order addresses allegations that Wells Fargo Financial employees steered potential prime borrowers into more costly subprime loans and separately falsified income information in mortgage applications. In addition to the civil money penalty, the order requires that Wells Fargo compensate affected borrowers. *See http://www.federalreserve.gov/newsevents/press/enforcement/20110720a.htm.*

[7] Inside Mortg. Fin., *Mortgage Originations by Product, in* 1 The 2011 Mortgage Market Statistical Annual 20 (2011).

[8] FCIC Report at 215–217.

[9] CoreLogic's TrueStandings Servicing (reflects first-lien mortgage loans) (data service accessible only through paid subscription).

[10] *Id.*

[11] *Id.* at 217.

[12] *Id.* at 124.

[13] *The U.S. Housing Market: Current Conditions and Policy Considerations,* 3 (Fed. Reserve Bd., White Paper, 2012), *available at http://www.federalreserve.gov/publications/other-reports/files/housing-white-paper-20120104.pdf.*

[14] Lender Processing Servs., PowerPoint Presentation, *LPS Mortgage Monitor: December 2012 Mortgage Performance Observations, Data as of November 2012 Month End,* 3, 11 (December 2012), *available at http://www.lpsvcs.com/LPSCorporateInformation/CommunicationCenter/DataReports/Pages/Mortgage-Monitor.aspx.*

[15] HERA, which created the Federal Housing Finance Agency (FHFA), granted the Director of FHFA discretionary authority to appoint FHFA conservator or receiver of the Enterprises ''for the purpose of reorganizing, rehabilitating, or winding up the affairs of a regulated entity.'' Housing and Economic Recovery Act of 2008, section 1367(a)(2), amending the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, 12 U.S.C. 4617(a)(2). On September 6, 2008, FHFA exercised that authority, placing Fannie Mae and Freddie Mac into conservatorships. The two GSEs have since received more than $180 billion in support from the Department of the Treasury. Through the second quarter of 2012, Fannie Mae has drawn $116.1 billion and Freddie Mac has drawn $71.3 billion, for an aggregate draw of $187.5 billion from the Department of the Treasury. Fed. Hous. Fin. Agency, *Conservator's Report on the Enterprises' Financial Performance,* at 17 (Second Quarter 2012), *available at http://www.fhfa.gov/webfiles/24549/ConservatorsReport2Q2012.pdf.*

[16] The Making Home Affordable Program (MHA) is the umbrella program for Treasury's homeowner assistance and foreclosure mitigation efforts. The main MHA components are the Home Affordable Modification Program (HAMP), a Treasury program that uses TARP funds to provide incentives for mortgage servicers to modify eligible first-lien mortgages, and two initiatives at the GSEs that use non-TARP funds. Incentive payments for modifications to loans owned or guaranteed by the GSEs are paid by the GSEs, not TARP. Treasury over time expanded MHA to include sub-programs designed to overcome obstacles to sustainable HAMP modifications. Treasury also allocated TARP funds to support two additional housing support efforts: an FHA refinancing program and TARP funding for 19 state housing finance agencies, called the Housing Finance Agency Hardest Hit Fund. In the first half of 2012, Treasury extended the application period for HAMP by a year to December 31, 2013, and opened HAMP to non-owner-occupied rental properties and to consumers with a wider range of debt-to-income ratios under ''HAMP Tier 2.''

Federal government efforts have endeavored to keep the country's housing finance system functioning, including the Treasury Department's and the Federal Reserve System's mortgage-backed securities (MBS) purchase programs to help keep interest rates low and the Federal Housing Administration's (FHA's) increased market presence. As a result, mortgage credit has remained available, albeit with more restrictive underwriting terms that limit or preclude some consumers' access to credit. These same government agencies together with the GSEs and other market participants have also undertaken a series of efforts to help families avoid foreclosure through loan-modification programs, loan-refinance programs and foreclosure alternatives.[17]

Size and Volume of the Current Mortgage Origination Market

Even with the economic downturn and tightening of credit standards, approximately $1.28 trillion in mortgage loans were originated in 2011.[18] In exchange for an extension of mortgage credit, consumers promise to make regular mortgage payments and provide their home or real property as collateral. The overwhelming majority of homebuyers continue to use mortgage loans to finance at least some of the purchase price of their property. In 2011, 93 percent of all home purchases were financed with a mortgage credit transaction.[19]

Consumers may obtain mortgage credit to purchase a home, to refinance an existing mortgage, to access home equity, or to finance home improvement. Purchase loans and refinancings together produced 6.3 million new first-lien mortgage loan originations in 2011.[20] The proportion of loans that are for purchases as opposed to refinances varies with the interest rate environment and other market factors. In 2011, 65 percent of the market was refinance transactions and 35 percent was purchase loans, by volume.[21] Historically the distribution has been more even. In 2000, refinances accounted for 44 percent of the market while purchase loans comprised 56 percent; in 2005, the two products were split evenly.[22]

With a home equity transaction, a homeowner uses his or her equity as collateral to secure consumer credit. The credit proceeds can be used, for example, to pay for home improvements. Home equity credit transactions and home equity lines of credit resulted in an additional 1.3 million mortgage loan originations in 2011.[23]

GSE-eligible loans, together with the other federally insured or guaranteed loans, cover the majority of the current mortgage market. Since entering conservatorship in September 2008, the GSEs have bought or guaranteed roughly three of every four mortgages originated in the country. Mortgages guaranteed by FHA make up most of the rest.[24] Outside of the securitization available through the Government National Mortgage Association (Ginnie Mae) for loans primarily backed by FHA, there are very few alternatives in place today to assume the secondary market functions served by the GSEs.[25]

Continued Fragility of the Mortgage Market

The current mortgage market is especially fragile as a result of the recent mortgage crisis. Tight credit remains an important factor in the contraction in mortgage lending seen over the past few years. Mortgage loan terms and credit standards have tightened most for consumers with lower credit scores and with less money available for a down payment. According to CoreLogic's TrueStandings Servicing, a proprietary data service that covers about two-thirds of the mortgage market, average underwriting standards have tightened considerably since 2007. Through the first nine months of 2012, for consumers that have received closed-end first-lien mortgages, the weighted average FICO[26] score was 750, the loan-to-value (LTV) ratio was 78 percent, and the debt-to-income (DTI) ratio was 34.5 percent.[27] In comparison, in the peak of the housing bubble in 2007, the weighted average FICO score was 706, the LTV was 80 percent, and the DTI was 39.8 percent.[28]

In this tight credit environment, the data suggest that creditors are not willing to take significant risks. In terms of the distribution of origination characteristics, for 90 percent of all the Fannie Mae and Freddie Mac mortgage loans originated in 2011, consumers had a FICO score over 700 and a DTI less than 44 percent.[29] According to the Federal Reserve's Senior Loan Officer Opinion Survey on Bank Lending Practices, in April, 2012 nearly 60 percent of creditors reported that they would be much less likely, relative to 2006, to originate a conforming home-purchase mortgage[30] to a consumer with a 10 percent down payment and a credit score of 620—a traditional marker for those consumers with weaker credit histories.[31] The Federal Reserve Board calculates that the share of mortgage borrowers with credit scores below 620 has fallen from about 17 percent of consumers at the end of 2006 to about 5 percent more recently.[32] Creditors also appear to have pulled back on offering these consumers loans insured by the FHA, which provides mortgage insurance on loans made by FHA-approved creditors throughout the United States and its territories and is

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[17] The Home Affordable Refinance Program (HARP) is designed to help eligible homeowners refinance their mortgage. HARP is designed for those homeowners who are current on their mortgage payments but have been unable to get traditional refinancing because the value of their homes has declined. For a mortgage to be considered for a HARP refinance, it *must* be owned or guaranteed by the GSEs. HARP ends on December 31, 2013.

[18] Moody's Analytics, *Credit Forecast 2012* (2012) (''Credit Forecast 2012''), *available at http://www.economy.com/default.asp* (reflects first-lien mortgage loans) (data service accessible only through paid subscription).

[19] Inside Mortg. Fin., *New Homes Sold by Financing, in* 1 The 2012 Mortgage Market Statistical Annual 12 (2012).

[20] Credit Forecast 2012.

[21] Inside Mortg. Fin., *Mortgage Originations by Product, in* 1 The 2012 Mortgage Market Statistical Annual 17 (2012).

[22] *Id.* These percentages are based on the dollar amount of the loans.

[23] Credit Forecast 2012 (reflects open-end and closed-end home equity loans).

[24] Fed. Hous. Fin. Agency, *A Strategic Plan for Enterprise Conservatorships: The Next Chapter in a Story that Needs an Ending,* at 14 (2012) (''FHFA Report''), *available at http://www.fhfa.gov/webfiles/23344/StrategicPlanConservatorshipsFINAL.pdf.*

[25] FHFA Report at 8–9. Secondary market issuance remains heavily reliant upon the explicitly government guaranteed securities of Fannie Mae, Freddie Mac, and Ginnie Mae. Through the first three quarters of 2012, approximately $1.2 trillion of the $1.33 trillion in mortgage originations have been securitized, less than $10 billion of the $1.2 trillion were non-agency mortgage backed securities. Inside Mortg. Fin. (Nov. 2, 2012) at 4.

[26] FICO is a type of credit score that makes up a substantial portion of the credit report that lenders use to assess an applicant's credit risk and whether to extend a loan.

[27] CoreLogic, TrueStandings Servicing Database, *available at http://www.truestandings.com* (data reflects first-lien mortgage loans) (data service accessible only through paid subscription). According to CoreLogic's TrueStandings Servicing, FICO reports that in 2011, approximately 38 percent of consumers receiving first-lien mortgage credit had a FICO score of 750 or greater.

[28] *Id.*

[29] *Id.*

[30] A conforming mortgage is one that is eligible for purchase or credit guarantee by Fannie Mae or Freddie Mac.

[31] Fed. Reserve Bd., *Senior Loan Officer Opinion Survey on Bank Lending Practices, available at http://www.federalreserve.gov/boarddocs/SnLoanSurvey/default.htm.*

[32] Federal Reserve Board staff calculations based on the Federal Reserve Bank of New York Consumer Credit Panel. The 10th percentile of credit scores on mortgage originations rose from 585 in 2006 to 635 at the end of 2011.

especially structured to help promote affordability.[33]

The Bureau is acutely aware of the high levels of anxiety in the mortgage market today. These concerns include the continued slow pace of recovery, the confluence of multiple major regulatory and capital initiatives, and the compliance burdens of the various Dodd-Frank Act rulemakings (including uncertainty on what constitutes a qualified residential mortgage (QRM), which relates to the Dodd-Frank Act's credit risk retention requirements and mortgage securitizations). The Bureau acknowledges that it will likely take some time for the mortgage market to stabilize and that creditors will need to adjust their operations to account for several major regulatory and capital regime changes.

The Mortgage Origination Process and Origination Channels

As discussed above, the mortgage market crisis focused attention on the critical role that loan officers and mortgage brokers play in guiding consumers through the loan origination process. Consumers must go through a mortgage origination process to obtain a mortgage loan. There are many actors involved in a mortgage origination. In addition to the creditor and the consumer, a transaction may involve a loan officer employed by a creditor, a mortgage broker, settlement agent, appraiser, multiple insurance providers, local government clerks and tax offices, and others. Purchase money loans involve additional parties such as sellers and real estate agents. These third parties typically charge fees or commissions for the services they provide which may be paid directly by the consumer or from loan proceeds, or indirectly through a creditor or broker.

Application. To obtain a mortgage loan, consumers must first apply through a loan originator. There are three different ''channels'' for mortgage loan origination in the current market:

• *Retail:* The consumer deals with a loan officer that works directly for the mortgage creditor, such as a bank, credit union, or specialized mortgage finance company. The creditor typically operates a network of branches, but may also communicate with consumers through mail and the internet. The entire origination transaction is conducted within the corporate structure of the creditor, and the loan is closed using funds supplied by the creditor. Depending on the type of creditor, the creditor may hold the loan in its portfolio or sell the loan to investors on the secondary market, as discussed further below.

• *Wholesale:* The consumer deals with an independent mortgage broker, which may be an individual or a mortgage brokerage firm. The broker may seek offers from many different creditors, and then acts as a liaison between the consumer and whichever creditor ultimately closes the loan. At closing, the loan is consummated by using the creditor's funds, and the mortgage note is written in the creditor's name.[34] Again, the creditor may hold the loan in its portfolio or sell the loan on the secondary market.

• *Correspondent:* The consumer deals with a loan officer that works directly for a ''correspondent lender'' that does not deal directly with the secondary market. At closing, the correspondent lender closes the loans using its own funds, but then immediately sells the loan to an ''acquiring creditor,'' which in turn either holds the loan in portfolio or sells it on the secondary market.

Both loan officers and mortgage brokers generally provide information to consumers about different types of loans and advise consumers on choosing a loan. Consumers rely on loan officers and mortgage brokers to determine what kind of loan best suits the consumers' needs. Loan officers and mortgage brokers also take a consumers' completed loan application for submission to the creditor's loan underwriter. The applications include consumers' credit and income information, along with information about the home to be purchased. Consumers can work with multiple loan originators to compare the loan offers that loan originators may obtain on their behalf from creditors. Once the consumers have decided to move forward with a loan, the loan originator may request additional information or documents from the consumers to support the information in the application and obtain an appraisal of the property.

Underwriting. Historically, the creditor's loan underwriter used the application and additional information to confirm initial information provided by the consumer. The underwriter assessed whether the creditor should take on the risk of making the mortgage loan. To make this decision, the underwriter considered whether the consumer could repay the loan and whether the home was worth enough to serve as collateral for the loan. If the underwriter found that the consumer and the home qualified, the underwriter would approve the consumer's mortgage application.

During the years preceding the mortgage crisis, much of this process broke down as previously discussed. Underwriting today appears to have largely returned to these historical norms. The Bureau's 2013 Ability To Repay (ATR) Final Rule is designed, in substantial part, to assure that as credit continues improve, creditors do not return to the problematic practices of the last decade.

Closing. After being approved for a mortgage loan, completing any closing requirements, and receiving necessary disclosures, the consumer can close on the loan. Multiple parties participate at closing, including the consumer, the creditor, and the settlement agent. In some instances, the loan originator also functions as the settlement agent. More commonly, a separate individual handles the settlement, although that individual may be an employee of the creditor or brokerage firm or of an affiliate of one of those.

Loan Pricing and Disposition of Closed Loans

From the consumer's perspective, loan pricing depends on several elements:

• *Loan terms.* The loan terms affect consumer costs and how the loan is to be repaid, including the type of loan ''product,'' the method of calculating monthly payments and repayment (for example, whether the payments are fully amortizing) and the length of the loan term.[35] The most important single term in determining the price is, of course, the interest rate (and for adjustable rate mortgages the index and margin).

• *Discount points and cash rebates.* Discount points are paid by consumers to the creditor to purchase a lower interest rate. Conversely, creditors may

[33] FHA insures mortgages on single family and multifamily homes including manufactured homes and hospitals. It is the largest insurer of mortgages in the world, insuring over 34 million properties since its inception in 1934.

[34] In some cases, mortgage brokers use a process called ''table funding,'' in which the transaction is closed using the wholesale creditor's funds at the settlement table, but the loan is closed in the broker's name. The broker simultaneously assigns the closed loan to the creditor. These types of transactions generally require the use of approved title companies or title attorneys of the creditor to assure strict adherence to the creditor's closing instructions. Such transactions are only valid in those states that allow ''wet closings.'' These types of closings are not as common today.

[35] The meaning of loan ''product'' is not firmly established and varies with the person using the term, but it generally refers to various combinations of features such as the type of interest rate and the form of amortization. Feature distinctions often thought of as distinct ''loan products'' include, for example, fixed rate versus adjustable rate loans and fully amortizing versus interest-only or negatively amortizing loans.

offer consumers a cash rebate at closing which can help cover upfront closing costs in exchange for paying a higher rate over the life of the loan. Both discount points and creditor rebates involve an exchange of cash now (in the form of a payment or credit at closing) for cash over time (in the form of a reduced or increased interest rate). Consumers will also incur some third-party fees in connection with a mortgage application such as the fee for an appraisal or for a credit report. These may be paid at origination or, in some cases, at closing.

• *Origination points or fees.* Creditors and loan originators also sometimes charge origination points or fees, which are typically presented as charges to apply for the loan. Origination fees can take a number of forms: A flat dollar amount, a percentage of the loan amount (*i.e.,* an ''origination point''), or a combination of the two. Origination points or fees may also be framed as a single lump sum or as several different fees (*e.g.,* application fee, underwriting fee, document preparation fee).

• *Closing costs.* Closing costs are the additional upfront costs of completing a mortgage transaction, including appraisal fees, title insurance, recording fees, taxes, and homeowner's insurance, for example. These closing costs, as distinct from upfront discount points and origination charges, often are paid to third parties other than the creditor or loan originator.

In practice, both discount points and origination points or fees are revenue to the lender or loan originator, and that revenue is fungible. The existence of two types of fees and the many names lenders use for origination fees—some of which may appear to be more negotiable than others—has the potential to confuse consumers.

Determining the appropriate trade-off between payments now and payments later requires a consumer to have a clear sense of how long he or she expects to stay in the home and in the particular loan. If the consumer plans to stay in the home for a number of years without refinancing, paying points to obtain a lower rate may make sense because the consumer will save more in monthly payments than he or she pays up front in discount points. If the consumer expects to move or refinance within a few years, however, then agreeing to pay a higher rate on the loan to reduce out of pocket expenses at closing may make sense because the consumer will save more up front than he or she will pay in increased monthly payments before moving or refinancing. There is a break-even moment in time where the present value of a reduction/increase to the rate just equals the corresponding upfront points/credits. If the consumer moves or refinances earlier (in the case of discount points) or later (in the case of creditor rebates) than the break-even moment, then the consumer will lose money compared to a consumer that neither paid discount points nor received creditor rebates.

The creditor's assessment of pricing—and in particular what different combinations of points, fees, and interest rates it is willing to offer particular consumers—is also driven by the trade-off between upfront and long-term payments. Creditors in general would prefer to receive as much money as possible up front, because having to wait for payments to come in over the life of the loan increases the level of risk. If consumers ultimately pay off a loan earlier than expected or cannot pay off a loan due to financial distress, the creditors will not earn the overall expected return on the loan. However, for creditors, as for consumers, there is a break-even point where the present value of a reduction/increase to the rate just equals the corresponding upfront points/credits. If the creditor reduces the upfront costs in return for a higher interest rate and the consumer continues to make payments on the loan beyond the break-even points, the creditor will come out ahead.

The creditor's calculation of these tradeoffs is generally heavily influenced by the secondary market, which allows creditors to sell off their loans to investors, recoup the capital they have invested in the loans, and recycle that capital into new loans. The investors then benefit from the payment streams over time, as well as bearing the risk of early payment or default. As described above, the creditor can benefit from going on to make additional money from additional loans. Thus, although some banks [36] and credit unions hold some loans in portfolio over time, many creditors prefer not to hold loans until maturity.[37]

When a creditor sells a loan into the secondary market, the creditor is exchanging an asset (the loan) that produces regular cash flows (principal and interest) for an upfront cash payment from the buyer.[38] That upfront cash payment represents the buyer's present valuation of the loan's future cash flows, using assumptions about the rate of prepayments due to moves and refinancings, the rate of expected defaults, the rate of return relative to other investments, and other factors. Secondary market buyers assume considerable risk in determining the price they are willing to pay for a loan. If, for example, loans prepay faster than expected or default at higher rates than expected, the investor will receive a lower return than expected. Conversely, if loans prepay more slowly than expected, or default at lower rates than expected, the investor will earn a higher return over time than expected.[39]

Secondary market mortgage prices are typically quoted in relation to the principal loan amount and are specific to a given interest rate and other factors that are correlated with default risk. For illustrative purposes, at some point in time, a loan with an interest rate of 3.5 percent might earn 102.5 in the secondary market. This means that for every $100 in initial loan principal amount, the secondary market buyer will pay $102.50. Of that amount, $100 is to cover the principal amount and $2.50 is revenue to the creditor in exchange for the rights to the future interest payments on the loan.[40] The secondary market price of a loan increases or decreases along with the loan's interest rate, but the relationship is not typically linear. In other words, using the above example at the same point in time, loans with interest rates higher than 3.5 percent will typically earn more than 102.5, and loans with interest rates less than 3.5 percent will typically earn less than 102.5. However, each subsequent 0.125 percent increment in interest rate above or below 3.5 percent may not be associated with the same size increment in

[36] As used throughout this document, the term ''banks'' also includes ''savings associations.''

[37] For companies that are affiliated with securitizers, the processing fees involved in creating investment vehicles on the secondary market can itself become a distinct revenue stream. Although the secondary market was originally created by government-sponsored enterprises Fannie Mae and Freddie Mac to provide liquidity for the mortgage market, over time, Wall Street companies began packaging mortgage loans into private-label mortgage-backed securities. Subprime and Alt-A loans, in particular, were often sold into private-label securities. During the boom, a number of large creditors started securitizing the loans themselves in-house, thereby capturing the final piece of the loan's value.

[38] For simplicity, this discussion assumes that the secondary market buyer is a person other than the creditor, such as Fannie Mae, Freddie Mac, or a Wall Street investment bank. In practice, during the mortgage boom, some creditors securitized their own loans. In this case, the secondary market price for the loans was effectively determined by the price investors were willing to pay for the subsequent securities.

[39] For simplicity, these examples do not take into account the use of various risk mitigation techniques, such as risk-sharing counterparties and loan level mortgage or other security credit enhancements.

[40] The creditor's profit is equal to secondary market revenue plus origination fees collected by the creditor (if any) plus value of the mortgage servicing rights (MSRs) less origination expenses.

secondary market price.[41] The same style of pricing is used when correspondent lenders sell loans to acquiring creditors.

In some cases, secondary market prices can actually be less than the principal amount of the loan. A price of 98.75, for example, means that for every $100 in principal, the selling creditor receives only $98.75. This represents a loss of $1.25 per $100 of principal just on the sale of the loan, before the creditor takes its expenses into account. This usually happens when the interest rate on the loan is below prevailing interest rates. But so long as discount points or other origination charges can cover the shortfall, the creditor will still make its expected return on the loan.

Discount points are also valuable to creditors (and secondary market investors) for another reason: because payment of discount points signals the consumer's expectations about how long he or she expects to stay in the loan, they make prepayment risk easier to predict. The more discount points a consumer pays, the longer the consumer likely expects to keep the loan in place. This fact mitigates a creditor's or investor's uncertainty about how long interest payments can be expected to continue, which facilitates assigning a present value to the loan's yield and, therefore, setting the loan's price.

Loan Originator Compensation

Brokerage firms and loan officers are typically paid a commission that is a percentage of the loan amount. Prior to 2010, it was common for the percentage to vary based upon the interest rate of the loan: commissions on loans with higher interest rates were higher than commission on loans with lower interest rates (just as the premiums paid by the secondary market for loans vary with the interest rate). This was typically called a ''yield spread premium.'' [42] In the wholesale context, the loan originator might keep the entire yield spread premium as a commission, or he or she might provide some of the yield spread premium to the borrower as a credit against closing costs.[43]

While this system was in place, it was common for loan originator commissions to mirror secondary market pricing closely. The ''price'' that the creditor offered to its brokers was somewhat lower than the price that the creditor expected to receive from the secondary market—the creditor kept the difference as corporate revenue. However, the underlying mechanics of the secondary market flowed through to the loan originator's compensation. The higher the interest rate on the loan or the more in upfront charges the consumer pays to the creditor (or both), the greater the compensation available to the loan originator. This created a situation in which the loan originator had a financial incentive to steer consumers into the highest interest rate possible or to impose on the consumer additional upfront charges payable to the creditor.

In a perfectly competitive and transparent market, competition would ensure that this incentive would be countered by the need to compete with other loan originators to offer attractive loan terms to consumers. However, the mortgage origination market is neither always perfectly competitive nor always transparent, and consumers (who take out a mortgage only a few times in their lives) may be uninformed about how prices work and what terms they can expect.[44] Moreover, prior to 2010, mortgage brokers were free to charge consumers directly for additional origination points or fees, which were generally described to the consumer as compensating for the time and expense of working with the consumer to submit the loan application. This compensation structure was problematic both because the loan originator had an incentive to steer borrowers into less favorable pricing terms while the consumer may have paid origination fees to the loan originator believing that the loan originator was working for the borrower, without knowing that the loan originator was receiving compensation from the creditor as well.

B. TILA and Regulation Z

Congress enacted the TILA based on findings that the informed use of credit resulting from consumers' awareness of the cost of credit would enhance economic stability and would strengthen competition among consumer credit providers. 15 U.S.C. 1601(a). One of the purposes of TILA is to provide meaningful disclosure of credit terms to enable consumers to compare credit terms available in the marketplace more readily and avoid the uninformed use of credit. *Id.* TILA's disclosures differ depending on whether credit is an open-end (revolving) plan or a closed-end (installment) loan. TILA also contains procedural and substantive protections for consumers. TILA is implemented by the Bureau's Regulation Z, 12 CFR part 1026, though historically the Board of Governors of the Federal Reserve System (Board) Regulation Z, 12 CFR part 226, had implemented TILA.[45]

In the aftermath of the mortgage crisis, regulators and lawmakers began focusing on concerns about the steering of consumers into less favorable loan terms than those for which they otherwise qualified. Both the Board and the Department of Housing and Urban Development (HUD) had explored the use of disclosures to inform consumers about loan originator compensation practices. HUD adopted a new disclosure regime under the Real Estate Settlement Procedures Act (RESPA), in a 2008 final rule, which addressed among other matters the disclosure of mortgage broker compensation. 73 FR 68204, 68222–27 (Nov. 17, 2008). The Board also proposed a disclosure-based approach to addressing concerns with mortgage broker compensation. 73 FR 1672, 1698 (Jan. 9, 2008). The Board later determined, however, that the proposed approach presented a significant risk of misleading consumers regarding both the relative costs of brokers and creditors and the role of brokers in their transactions and, consequently, withdrew that aspect of the 2008 proposal as part of its 2008 Home Ownership and Equity Protection

[41] Susan E. Woodward, Urban Inst., *A Study of Closing Costs for FHA Mortgages* 10–11 (U.S. Dep't of Hous. & Urban Dev. 2008), *available at: http://www.huduser.org/publications/pdf/FHA_closing_cost.pdf.*

[42] Some commenters use the term ''yield spread premium'' to refer to any payment from a creditor to a mortgage broker that is funded by increasing the interest rate that would otherwise be charged to the consumer in the absence of that payment. These commenters generally assume that any payment to the brokerage firm by the creditor is funded out of the interest rate, reasoning that had the consumer paid the brokerage firm directly, the creditor would have had lower expenses and would have been able to charge a lower rate. Other commenters use the term ''yield spread premium'' more narrowly to refer only to a payment from a creditor to a mortgage broker that is based on the interest rate, i.e., the mortgage broker receives a larger payment if the consumer agrees to a higher interest rate. To avoid confusion, the Bureau is limiting its use of the term and is instead more specifically describing the payment at issue.

[43] Mortgage brokers, and some retail loan officers, were compensated in this fashion. Some retail loan officers may have been paid a salary with a bonus for loan volume, rather than yield spread premium-based commissions.

[44] James Lacko and Janis Pappalardo, *Improving Consumer Mortgage Disclosures: An Empirical Assessment of Current and Prototype Disclosure Forms,* Federal Trade Commission, ES–12 (June 2007), *available at http://www.ftc.gov/os/2007/06/P025505MortgageDisclosureReport.pdf,* Brian K. Bucks and Karen M. Pence, *Do Borrowers Know their Mortgage Terms?,* J. of Urban Econ. (2008), *available at http://works.bepress.com/karen_pence/5,* Hall and Woodward, *Diagnosing Consumer Confusion and Sub-Optimal Shopping Effort: Theory and Mortgage-Market Evidence* (2012), *available at http://www.stanford.edu/~rehall/DiagnosingConsumerConfusionJune2012.*

[45] The Board's rule remains applicable to certain motor vehicle dealers. *See* 12 U.S.C. 5519 (Section 1029 of the Dodd-Frank Act).

Act (HOEPA) Final Rule.[46] 73 FR 44522, 44564 (July 30, 2008).

The Board in 2009 proposed new rules addressing in a more substantive fashion loan originator compensation practices. The Board's proposal included, among other provisions, proposed rules prohibiting certain payments to a mortgage broker or loan officer based on the transaction's terms or conditions, prohibiting dual compensation as described above, and prohibiting a mortgage broker or loan officer from ''steering'' consumers to transactions not in their interest, to increase mortgage broker or loan officer compensation. The Board based that proposal on its authority to prohibit acts or practices in the mortgage market that the Board found to be unfair, deceptive, or (in the case of refinancings) abusive under TILA section 129(l)(2) (now redesignated as TILA section 129(p)(2), 15 U.S.C. 1639(p)(2)). 74 FR 43232, 43279–286 (Aug. 26, 2009). Although the Board issued its proposal prior to the enactment of the Dodd-Frank Act, Congress subsequently amended TILA to codify significant elements of the Board's proposal. *See, e.g.,* 15 U.S.C. 1639b (Section 1403 of the Dodd-Frank Act). The Board therefore decided in 2010 to finalize the rules it had proposed under its preexisting TILA powers, while acknowledging that further rulemaking would be required to address certain issues and adjustments made by the Dodd-Frank Act.[47] 75 FR 58509 (Sept. 24, 2010) (2010 Loan Originator Final Rule). The Board's 2010 Loan Originator Final Rule took effect in April 2011.

Most notably, the Board's 2010 Loan Originator Final Rule substantially restricted the payments to loan originators which create incentives for them to steer consumers to more expensive loans. Under this rule, creditors may not base a loan originator's compensation on the transaction's terms or conditions, other than the mortgage loan amount. In addition, the rule prohibits ''dual compensation,'' in which a loan originator is paid compensation by both the consumer and the creditor (or any other person). *See generally* 12 CFR 226.36(d). After authority for Regulation Z transferred from the Board, the Bureau republished the rule at 12 CFR 1026.36(d). 76 FR 79768 (Dec. 22, 2011).

C. The SAFE Act

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act), 12 U.S.C. 5106–5116, generally prohibits an individual from engaging in the business of a loan originator without first obtaining, and maintaining annually, a unique identifier from the NMLSR and either a registration as a registered loan originator or a license and registration as a State-licensed loan originator. 12 U.S.C. 5103. Loan originators who are employees of depository institutions are generally subject to the registration requirement, which is implemented by the Bureau's Regulation G, 12 CFR part 1007. Other loan originators are generally subject to the State licensing requirement, which is implemented by the Bureau's Regulation H, 12 CFR part 1008, and by State law.

D. The Dodd-Frank Act

The Dodd-Frank Act expanded on previous efforts by lawmakers and regulators to strengthen loan originator qualification requirements and regulate industry compensation practices. Public Law 111–203, 124 Stat. 1376 (approved July 21, 2010). The Dodd-Frank Act adopted several new provisions concerning the compensation and qualifications of mortgage originators, defined related terms, and prohibited certain arbitration and credit insurance financing practices. *See* Dodd-Frank Act sections 1401, 1402, 1403, and 1414. Section 1401 of the Dodd-Frank Act amended TILA section 103 to add definitions of the term ''mortgage originator'' and of other terms relating to mortgage loan origination. 15 U.S.C. 1602. Section 1402 of the Dodd-Frank Act amended TILA section 129 by redesignating existing text and adding section 129B to require mortgage originators to meet qualification standards and depository institutions to establish and maintain procedures reasonably designed to assure compliance with these qualification standards, the loan originator registration procedures established pursuant to the SAFE Act, and the other requirements of TILA section 129B. TILA section 129B also requires mortgage originators to provide their license or registration number on loan documents. 15 U.S.C. 1639b. Section 1403 of the Dodd-Frank Act amended new TILA section 129B to prohibit loan originator compensation that varies based on the terms of the loan, other than the amount of the principal, and generally to prohibit loan originators from being compensated simultaneously by both the consumer and a person other than the consumer. Section 1403 of the Dodd-Frank Act also added new TILA section 129B(c)(2), which would generally have prohibited consumers from paying upfront points or fees on transactions in which the loan originator compensation is paid by the creditor (either to the creditor's own employee or to a mortgage broker). However, TILA section 129B(c)(2) also authorized the Bureau to waive or create exemptions from the prohibition on upfront points and fees if the Bureau determines that doing so would be in the interest of consumers and in the public interest. Section 1414 of the Dodd-Frank Act amended new TILA section 129C, in part to prohibit certain financing practices for single-premium credit insurance and debt cancellation or suspension agreements and to restrict mandatory arbitration agreements.

III. Summary of Rulemaking Process

A. Pre-Proposal Outreach

In developing a proposal to implement sections 1401, 1402, 1403, and 1414 of the Dodd-Frank Act, the Bureau conducted extensive outreach. Bureau staff met with and held in-depth conference calls with large and small bank and non-bank mortgage creditors, mortgage brokers, trade associations, secondary market participants, consumer groups, nonprofit organizations, and State regulators. Discussions covered existing business models and compensation practices and the impact of the existing 2010 Loan Originator Compensation Final Rule. They also covered the Dodd-Frank Act provisions and the impact on consumers, loan originators, lenders, and secondary market participants of various options for implementing the statutory provisions. The Bureau developed several of the proposed clarifications of existing regulatory requirements in response to compliance inquiries and with input from industry participants.

In addition, the Bureau held roundtable meetings with other Federal banking and housing regulators, consumer groups, and industry

[46] The Board indicated that it would continue to explore available options to address potential unfairness associated with loan originator compensation practices. 73 FR 44522, 44565 (July 30, 2008).

[47] As the Board explained: ''The Board has decided to issue this final rule on loan originator compensation and steering, even though a subsequent rulemaking will be necessary to implement Section 129B(c). The Board believes that Congress was aware of the Board's proposal and that in enacting TILA Section 129B(c), Congress sought to codify the Board's proposed prohibitions while expanding them in some respects and making other adjustments. The Board further believes that it can best effectuate the legislative purpose of the [Dodd-Frank Act] by finalizing its proposal relating to loan origination compensation and steering at this time. Allowing enactment of TILA Section 129B(c) to delay final action on the Board's prior regulatory proposal would have the opposite effect intended by the legislation by allowing the continuation of the practices that Congress sought to prohibit.'' 75 FR 58509 (Sept. 24, 2010).

representatives regarding the Small Business Review Panel Outline. At the Bureau's request, many of the participants provided feedback, which the Bureau considered in preparing the proposed rule as well as this final rule.

B. Small Business Review Panel

In May 2012, the Bureau convened a Small Business Review Panel with the Chief Counsel for Advocacy of the Small Business Administration (SBA Advocacy) and the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).[48] As part of this process, the Bureau prepared an outline of the proposals then under consideration and the alternatives considered (Small Business Review Panel Outline), which the Bureau posted on its Web site for review by the general public as well as the small entities participating in the panel process.[49] The Small Business Review Panel gathered information from representatives of small creditors, mortgage brokers, and not-for-profit organizations and made findings and recommendations regarding the potential compliance costs and other impacts of the proposed rule on those entities. These findings and recommendations were set forth in the Small Business Review Panel Report, which was made part of the administrative record in this rulemaking.[50] The Bureau carefully considered these findings and recommendations in preparing the proposed rule.

C. Proposed Rule

On September 7, 2012, the Bureau published a proposed rule in the **Federal Register** to implement the Dodd-Frank Act requirements, as well as to revise and clarify existing regulations and commentary on loan originator compensation. 77 FR 55272 (Sept. 7, 2012) (the ''2012 Loan Originator Compensation Proposal''). The proposal included the following main provisions:

1. Restrictions on Loan Originator Compensation

The proposal would have adjusted existing rules governing compensation to loan officers and mortgage brokers in connection with closed-end mortgage transactions to account for the Dodd-Frank Act and to provide greater clarity and flexibility. Specifically, the proposal would have continued the general ban on paying or receiving commissions or other loan originator compensation based on the terms of the transaction (other than loan amount), with some refinements.

Pricing Concessions: The proposal would have allowed loan originators to reduce their compensation to cover unanticipated increases in closing costs from non-affiliated third parties under certain circumstances.

Proxies: The proposal would have clarified when a factor used as a basis for compensation is prohibited as a ''proxy'' for a transaction term.

Profit-sharing: The proposal would have clarified and revised restrictions on pooled compensation, profit-sharing, and bonus plans for loan originators by permitting contributions from general profits derived from mortgage activity to 401(k) plans, employee stock plans, and other ''qualified plans'' under tax and employment law. The proposal would have permitted payment of bonuses or contributions to non-qualified profit-sharing or retirement plans from general profits derived from mortgage activity if either: (1) The loan originator affected has originated five or fewer mortgage transactions during the last 12 months; or (2) the company's mortgage business revenues are a limited percentage of its total revenues. The proposal solicited comment on other alternatives to the measure based on company revenue, including an individual loan originator total compensation test.

Dual Compensation: The proposal would have continued the general ban on loan originators being compensated by both consumers and other persons but would have allowed mortgage brokerage firms that are paid by the consumer to pay their individual brokers a commission, so long as the commission is not based on the terms of the transaction.

2. Restriction on Upfront Points and Fees

The Bureau proposed to use its exemption authority under the Dodd-Frank Act to allow creditors and loan originator organizations to continue making available loans with consumer-paid upfront points or fees, so long as they also make available a comparable, alternative loan without those points or fees. The proposal generally would have required that, before a creditor or loan originator organization may impose upfront points or fees on a consumer in a closed-end mortgage transaction, the creditor must make available to the consumer a comparable, alternative loan with no upfront discount points, origination points, or origination fees that are retained by the creditor, broker, or an affiliate of either (a ''zero-zero alternative''). The requirement would not have applied where the consumer is unlikely to qualify for the zero-zero alternative. The Bureau solicited comments on variations and alternatives to this approach.

3. Loan Originator Qualification Requirements

The proposal would have implemented the Dodd-Frank Act provision requiring each loan originator both to be ''qualified'' and to include his or her NMLSR ID on certain specified loan documents. The proposal would have required loan originator organizations to ensure their loan originators not already required to be licensed under the SAFE Act meet character, fitness, and criminal background check standards that are similar to SAFE Act requirements and receive training commensurate with their duties. The loan originator organization and the individual loan originators that are primarily responsible for a particular transaction would have been required to list their NMLSR ID and names on certain key loan documents.

4. Other Provisions

The proposal would have banned both agreements requiring consumers to submit any disputes that may arise to mandatory arbitration rather than filing suit in court, and the financing of premiums for credit insurance.

D. Overview of Public Comments

The Bureau received 713 comments on the 2012 Loan Originator Compensation Proposal. The comments came from individual consumers, consumer groups, community banks, large banks, large bank holding companies, secondary market participants, credit unions, nonbank servicers, State and national trade associations for financial institutions, local and national community groups, Federal and State regulators, academics, and other interested parties. Although

[48] The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the Bureau to convene a Small Business Review Panel before proposing a rule that may have a substantial economic impact on a significant number of small entities. *See* Public Law 104–121, tit. II, 110 Stat. 847, 857 (1996) (as amended by Pub. L. 110–28, section 8302 (2007)).

[49] U.S. Consumer Fin. Prot. Bureau, *Outline of Proposals under Consideration and Alternatives Considered* (May 9, 2012), available at: *http://files.consumerfinance.gov/f/201205_cfpb_MLO_SBREFA_Outline_of_Proposals.pdf*.

[50] U.S. Consumer Fin. Prot. Bureau, U.S. Small Bus. Admin., and U.S. Office of Mgmt. and Budget, *Final Report of the Small Business Review Panel on CFPB's Proposals Under Consideration for Residential Mortgage Loan Origination Standards Rulemaking* (July 11, 2012) (Small Business Review Panel Final Report), *available at http://files.consumerfinance.gov/f/201208_cfpb_LO_comp_SBREFA.pdf*.

some commenters provided comments on all of the major provisions of the 2012 Loan Originator Compensation Proposal, most commenters focused on specific aspects of the proposal, as discussed in greater detail in the section-by-section analysis below.

Many commenters addressed the proposed provisions regarding records that creditors and loan originator organizations would have been required to maintain to demonstrate compliance with the compensation-related provisions of the proposal. The majority of commenters agreed with the Bureau's belief that the proposed increase in the recordkeeping period from two years to three years would not significantly increase costs. Some commenters asked for clarification regarding what types of records would be required to be maintained.

Numerous commenters addressed the proposed definition of ''loan originator,'' which determines which persons would be subject to several of the provisions in the proposal. The topic that the largest number of commenters addressed was the exception from the definition of ''loan originator'' for certain persons who provide financing to consumers who purchase a dwelling from these persons (*i.e.,* ''seller financing''). Individuals, industry professionals, and small business owners commented that the Bureau had overlooked the impact that the proposal would have on consumers, stating that it would reduce access to credit for some while eliminating a reliable retirement vehicle for others.

A large number of commenters addressed the Bureau's proposal to allow creditors to charge upfront origination points, discounts, and fees in transactions in which someone other than the consumer pays compensation to a loan originator, provided that the creditor make available to the consumer loan terms without upfront origination points, discount points, or fees (*i.e.,* the zero-zero alternative). One of the most common assertions from commenters relating to points and fees was that the zero-zero alternative restrictions were duplicative of other regulations, or that the restrictions being implemented in other rules were sufficient and more effective at protecting consumers.

Many banks, credit unions, and mortgage professionals expressed concern that prohibiting discount points would result in higher interest rates, could reduce access to credit for consumers, and would subject the creditors to higher-priced mortgage rules. Banks and credit unions opined that complying with the proposal would make lower-value loans unprofitable and banks and credit unions would no longer be able to profitably serve that segment of the market.

A significant number of commenters asserted that the proposal would have a negative impact on affiliated businesses, namely inconvenience, reduced pricing advantages, and duplicative processes. Other commenters advocated exempting fees for title services from the types of compensation treated as loan originator compensation when it is paid to an affiliate. Several commenters asserted that a restriction on title services would not benefit consumers and could detrimentally limit consumers' credit options.

There was no consensus among consumer groups on whether, or how, the Bureau should use its exemption authority regarding the statutory ban on consumers paying upfront points and fees. Some industry commenters advocated adjustments or alternatives to the zero-zero proposal, rather than a complete exemption, although the approaches varied by commenter.

A large number of comments addressed qualification standards for loan originators who are not subject to State licensing requirements. Representatives of banks stated that the proposed requirements were duplicative of existing requirements. Representatives of nonbank creditors and brokers argued that the proposal was too lenient, would allow for unqualified loan originators to work at depository institutions, and would create an unfair competitive advantage for these institutions.

E. Post-Proposal Outreach

After the proposal was issued, the Bureau held roundtable meetings with other Federal banking and housing regulators, consumer groups, and industry representatives to discuss the proposal and the final rule. At the Bureau's request, many of the participants provided feedback, which the Bureau has considered in preparing the final rule.

F. Other Rulemakings

In addition to this final rule, the Bureau is adopting several other final rules and issuing one proposal, all relating to mortgage credit to implement requirements of title XIV of the Dodd-Frank Act. The Bureau is also issuing a final rule jointly with other Federal agencies to implement requirements for mortgage appraisals in title XIV. Each of the final rules follows a proposal issued in 2011 by the Board or in 2012 by the Bureau alone or jointly with other Federal agencies. Collectively, these proposed and final rules are referred to as the Title XIV Rulemakings.

- *Ability to Repay:* The Bureau recently issued a rule, following a May 2011 proposal issued by the Board (the Board's 2011 ATR Proposal), 76 FR 27390 (May 11, 2011), to implement provisions of the Dodd-Frank Act (1) requiring creditors to determine that a consumer has a reasonable ability to repay covered mortgage loans and establishing standards for compliance, such as by making a ''qualified mortgage,'' and (2) establishing certain limitations on prepayment penalties, pursuant to TILA section 129C as established by Dodd-Frank Act sections 1411, 1412, and 1414. 15 U.S.C. 1639c. The Bureau's final rule is referred to as the 2013 ATR Final Rule. Simultaneously with the 2013 ATR Final Rule, the Bureau issued a proposal to amend the final rule implementing the ability-to-repay requirements, including by the addition of exemptions for certain nonprofit creditors and certain homeownership stabilization programs and a definition of a ''qualified mortgage'' for certain loans made and held in portfolio by small creditors (the 2013 ATR Concurrent Proposal). The Bureau expects to act on the 2013 ATR Concurrent Proposal on an expedited basis, so that any exceptions or adjustments to the 2013 ATR Final Rule can take effect simultaneously with that rule.
- *Escrows:* The Bureau recently issued a rule, following a March 2011 proposal issued by the Board (the Board's 2011 Escrows Proposal), 76 FR 11598 (Mar. 2, 2011), to implement certain provisions of the Dodd-Frank Act expanding on existing rules that require escrow accounts to be established for higher-priced mortgage loans and creating an exemption for certain loans held by creditors operating predominantly in rural or underserved areas, pursuant to TILA section 129D as established by Dodd-Frank Act sections 1461. 15 U.S.C. 1639d. The Bureau's final rule is referred to as the 2013 Escrows Final Rule.
- *HOEPA:* Following its July 2012 proposal (the 2012 HOEPA Proposal), 77 FR 49090 (Aug. 15, 2012), the Bureau recently issued a final rule to implement Dodd-Frank Act requirements expanding protections for ''high-cost mortgages'' under the Homeownership and Equity Protection Act (HOEPA), pursuant to TILA sections 103(bb) and 129, as amended by Dodd-Frank Act sections 1431 through 1433. 15 U.S.C. 1602(bb) and 1639. The Bureau recently issued rules to implement certain title XIV requirements concerning homeownership counseling, including a

requirement that lenders provide lists of homeownership counselors to applicants for federally related mortgage loans, pursuant to RESPA section 5(c), as amended by Dodd-Frank Act section 1450. 12 U.S.C. 2604(c). The Bureau's final rule is referred to as the 2013 HOEPA Final Rule.

- *Servicing:* Following its August 2012 proposals (the 2012 RESPA Servicing Proposal and 2012 TILA Servicing Proposal), 77 FR 57200 (Sept. 17, 2012) (RESPA); 77 FR 57318 (Sept. 17, 2012) (TILA), the Bureau recently issued final rules to implement Dodd-Frank Act requirements regarding force-placed insurance, error resolution, information requests, and payment crediting, as well as requirements for mortgage loan periodic statements and adjustable-rate mortgage reset disclosures, pursuant to section 6 of RESPA and sections 128, 128A, 129F, and 129G of TILA, as amended or established by Dodd-Frank Act sections 1418, 1420, 1463, and 1464. 12 U.S.C. 2605; 15 U.S.C. 1638, 1638a, 1639f, and 1639g. The Bureau also recently finalized rules on early intervention for troubled and delinquent borrowers, and loss mitigation procedures, pursuant to the Bureau's authority under section 6 of RESPA, as amended by Dodd-Frank Act section 1463, to establish obligations for mortgage servicers that it finds to be appropriate to carry out the consumer protection purposes of RESPA, and its authority under section 19(a) of RESPA to prescribe rules necessary to achieve the purposes of RESPA. The Bureau's final rule under RESPA with respect to mortgage servicing also establishes requirements for general servicing standards policies and procedures and continuity of contact pursuant to its authority under section 19(a) of RESPA. The Bureau's final rules are referred to as the 2013 RESPA Servicing Final Rule and the 2013 TILA Servicing Final Rule, respectively.
- *Appraisals:* The Bureau, jointly with other Federal agencies,[51] is issuing a final rule implementing Dodd-Frank Act requirements concerning appraisals for higher-risk mortgages, pursuant to TILA section 129H as established by Dodd-Frank Act section 1471. 15 U.S.C. 1639h. This rule follows the agencies' August 2012 joint proposal (the 2012 Interagency Appraisals Proposal). 77 FR 54722 (Sept. 5, 2012). The agencies' joint final rule is referred to as the 2013 Interagency Appraisals Final Rule. In addition, following its August 2012 proposal (the 2012 ECOA Appraisals Proposal), 77 FR 50390 (Aug. 21, 2012), the Bureau is issuing a final rule to implement provisions of the Dodd-Frank Act requiring that creditors provide applicants with a free copy of written appraisals and valuations developed in connection with applications for loans secured by a first lien on a dwelling, pursuant to section 701(e) of the Equal Credit Opportunity Act (ECOA) as amended by Dodd-Frank Act section 1474. 15 U.S.C. 1691(e). The Bureau's final rule is referred to as the 2013 ECOA Appraisals Final Rule.

The Bureau is not at this time finalizing proposals concerning various disclosure requirements that were added by title XIV of the Dodd-Frank Act, integration of mortgage disclosures under TILA and RESPA, or a simpler, more inclusive definition of the finance charge for purposes of disclosures for closed-end mortgage transactions under Regulation Z. The Bureau expects to finalize these proposals and to consider whether to adjust regulatory thresholds under the Title XIV Rulemakings in connection with any change in the calculation of the finance charge later in 2013, after it has completed quantitative testing, and any additional qualitative testing deemed appropriate, of the forms that it proposed in July 2012 to combine TILA mortgage disclosures with the good faith estimate (RESPA GFE) and settlement statement (RESPA settlement statement) required under RESPA, pursuant to Dodd-Frank Act section 1032(f) and sections 4(a) of RESPA and 105(b) of TILA, as amended by Dodd-Frank Act sections 1098 and 1100A, respectively (the 2012 TILA–RESPA Proposal). 77 FR 51116 (Aug. 23, 2012). Accordingly, the Bureau already has issued a final rule delaying implementation of various affected title XIV disclosure provisions. 77 FR 70105 (Nov. 23, 2012). The Bureau's approaches to coordinating the implementation of the Title XIV Rulemakings and to the finance charge proposal are discussed in turn below.

G. Coordinated Implementation of Title XIV Rulemakings

As noted in all of its foregoing proposals, the Bureau regards each of the Title XIV Rulemakings as affecting aspects of the mortgage industry and its regulations. Accordingly, as noted in its proposals, the Bureau is coordinating carefully the Title XIV Rulemakings, particularly with respect to their effective dates. The Dodd-Frank Act requirements to be implemented by the Title XIV Rulemakings generally will take effect on January 21, 2013, unless final rules implementing those requirements are issued on or before that date and provide for a different effective date. *See* Dodd-Frank Act section 1400(c), 15 U.S.C. 1601 note. In addition, some of the Title XIV Rulemakings are to take effect no later than one year after they are issued. *Id.*

The comments on the appropriate implementation date for this final rule are discussed in detail below in part VI of this notice. In general, however, consumer groups requested that the Bureau put the protections in the Title XIV Rulemakings into effect as soon as practicable. In contrast, the Bureau received some industry comments indicating that implementing so many new requirements at the same time would create a significant cumulative burden for creditors. In addition, many commenters also acknowledged the advantages of implementing multiple revisions to the regulations in a coordinated fashion.[52] Thus, a tension exists between coordinating the adoption of the Title XIV Rulemakings and facilitating industry's implementation of such a large set of new requirements. Some have suggested that the Bureau resolve this tension by adopting a sequenced implementation, while others have requested that the Bureau simply provide a longer implementation period for all of the final rules.

The Bureau recognizes that many of the new provisions will require creditors and loan originators to make changes to automated systems and, further, that most administrators of large systems are reluctant to make too many changes to their systems at once. At the same time, however, the Bureau notes that the Dodd-Frank Act established virtually all of these changes to institutions' compliance responsibilities, and contemplated that they be implemented in a relatively short period of time. And, as already noted, the extent of interaction among

[51] Specifically, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Federal Housing Finance Agency.

[52] Of the several final rules being adopted under the Title XIV Rulemakings, six entail amendments to Regulation Z, with the only exceptions being the 2013 RESPA Servicing Final Rule (Regulation X) and the 2013 ECOA Appraisals Final Rule (Regulation B); the 2013 HOEPA Final Rule also amends Regulation X, in addition to Regulation Z. The six Regulation Z final rules involve numerous instances of intersecting provisions, either by cross-references to each other's provisions or by adopting parallel provisions. Thus, adopting some of those amendments without also adopting certain other, closely related provisions would create significant technical issues, *e.g.,* new provisions containing cross-references to other provisions that do not yet exist, which could undermine the ability of creditors and other parties subject to the rules to understand their obligations and implement appropriate systems changes in an integrated and efficient manner.

many of the Title XIV Rulemakings necessitates that many of their provisions take effect together. Finally, notwithstanding commenters' expressed concerns for cumulative burden, the Bureau expects that creditors and loan originators actually may realize some efficiencies from adapting their systems for compliance with multiple new, closely related requirements at once, especially if given sufficient overall time to do so.

Accordingly, the Bureau is requiring that, as a general matter, creditors, loan originators, and other affected persons begin complying with the final rules on January 10, 2014. As noted above, section 1400(c) of the Dodd-Frank Act requires that some provisions of the Title XIV Rulemakings take effect no later than one year after the Bureau issues them. Accordingly, the Bureau is establishing January 10, 2014, one year after issuance of the Bureau's 2013 ATR, Escrows, and HOEPA Final Rules (*i.e.,* the earliest of the title XIV final rules), as the baseline effective date for most of the Title XIV Rulemakings. The Bureau believes that, on balance, this approach will facilitate the implementation of the rules' overlapping provisions, while also affording creditors sufficient time to implement the more complex or resource-intensive new requirements.

The Bureau has identified certain rulemakings or selected aspects thereof, however, that do not present significant implementation burdens for industry, including § 1026.36(h) and (i) of this final rule. Accordingly, the Bureau is setting earlier effective dates for these paragraphs and certain other final rules or aspects thereof, as applicable. The effective dates for this final rule are set forth and explained in part VI. The effective dates for the other final rules are discussed in the **Federal Register** notices for those rules.

More Inclusive Finance Charge Proposal

As noted above, the Bureau proposed in the 2012 TILA–RESPA Proposal to make the definition of finance charge more inclusive, thus rendering the finance charge and annual percentage rate a more useful tool for consumers to compare the cost of credit across different alternatives. 77 FR 51116, 51143 (Aug. 23, 2012). Because the new definition would include additional costs that are not currently counted, it would cause the finance charges and APRs on many affected transactions to increase. This in turn could cause more such transactions to become subject to various compliance regimes under Regulation Z. Specifically, the finance charge is central to the calculation of a transaction's ''points and fees,'' which in turn has been (and remains) a coverage threshold for the special protections afforded ''high-cost mortgages'' under HOEPA. Points and fees also will be subject to a 3-percent limit for purposes of determining whether a transaction is a ''qualified mortgage'' under the 2013 ATR Final Rule. Meanwhile, the APR serves as a coverage threshold for HOEPA protections as well as for certain protections afforded ''higher-priced mortgage loans'' under § 1026.35, including the mandatory escrow account requirements being amended by the 2013 Escrows Final Rule. Finally, because the 2013 Interagency Appraisals Final Rule uses the same APR-based coverage test as is used for identifying higher-priced mortgage loans, the APR affects that rulemaking as well. Thus, the proposed more inclusive finance charge would have had the indirect effect of increasing coverage under HOEPA and the escrow and appraisal requirements for higher-priced mortgage loans, as well as decreasing the number of transactions that may be qualified mortgages—even holding actual loan terms constant—simply because of the increase in calculated finance charges, and consequently APRs, for closed-end mortgage transactions generally.

As noted above, these expanded coverage consequences were not the intent of the more inclusive finance charge proposal. Accordingly, as discussed more extensively in the Escrows Proposal, the HOEPA Proposal, the ATR Proposal, and the Interagency Appraisals Proposal, the Board and subsequently the Bureau (and other agencies) sought comment on certain adjustments to the affected regulatory thresholds to counteract this unintended effect. First, the Board and then the Bureau proposed to adopt a ''transaction coverage rate'' for use as the metric to determine coverage of these regimes in place of the APR. The transaction coverage rate would have been calculated solely for coverage determination purposes and would not have been disclosed to consumers, who still would have received only a disclosure of the expanded APR. The transaction coverage rate calculation would exclude from the prepaid finance charge all costs otherwise included for purposes of the APR calculation except charges retained by the creditor, any mortgage broker, or any affiliate of either. Similarly, the Board and Bureau proposed to reverse the effects of the more inclusive finance charge on the calculation of points and fees; the points and fees figure is calculated only as a HOEPA and qualified mortgage coverage metric and is not disclosed to consumers. The Bureau also sought comment on other potential mitigation measures, such as adjusting the numeric thresholds for particular compliance regimes to account for the general shift in affected transactions' APRs.

The Bureau's 2012 TILA–RESPA Proposal sought comment on whether to finalize the more inclusive finance charge proposal in conjunction with the Title XIV Rulemakings or with the rest of the TILA–RESPA Proposal concerning the integration of mortgage disclosure forms. 77 FR 51116, 51125 (Aug. 23, 2012). Upon additional consideration and review of comments received, the Bureau decided to defer a decision whether to adopt the more inclusive finance charge proposal and any related adjustments to regulatory thresholds until it later finalizes the TILA–RESPA Proposal. 77 FR 54843 (Sept. 6, 2012); 77 FR 54844 (Sept. 6, 2012).[53] Accordingly, the 2013 Escrows, HOEPA, ATR, and Interagency Appraisals Final Rules all are deferring any action on their respective proposed adjustments to regulatory thresholds.

IV. Legal Authority

On July 21, 2011, section 1061 of the Dodd-Frank Act transferred to the Bureau the ''consumer financial protection functions'' previously vested in certain other Federal agencies, including the Board. The term ''consumer financial protection function'' is defined to include ''all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines.'' 12 U.S.C. 5581(a)(1). TILA is a Federal consumer financial law. Dodd-Frank Act section 1002(14), 12 U.S.C. 5481(14) (defining ''Federal consumer financial law'' to include the ''enumerated consumer laws'' and the provisions of title X of the Dodd-Frank Act); Dodd-Frank Act section 1002(12), 12 U.S.C. 5481(12) (defining ''enumerated consumer laws'' to include TILA). Accordingly, the Bureau has authority to issue regulations pursuant to TILA. This final rule is issued on January 20, 2013, in accordance with 12 CFR 1074.1.

[53] These notices extended the comment period on the more inclusive finance charge and corresponding regulatory threshold adjustments under the 2012 TILA–RESPA and HOEPA Proposals. They did not change any other aspect of either proposal.

A. The Truth in Lending Act

TILA Section 103(cc)(2)(E)(v)

As added by the Dodd-Frank Act, TILA section 103(cc)(2)(E)(v), 15 U.S.C. 1602(cc)(2)(E)(v) authorizes the Bureau to prescribe other criteria that seller financers need to meet, aside from those enumerated in the statute, to qualify for the seller financer exclusion from the definition of the term ''mortgage originator. The Bureau's exercise of that authority is discussed in the section-by-section analysis of the seller financer exclusion.

TILA Section 105(a)

As amended by the Dodd-Frank Act, TILA section 105(a), 15 U.S.C. 1604(a), directs the Bureau to prescribe regulations to carry out the purposes of TILA, and provides that such regulations may contain additional requirements, classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for all or any class of transactions, that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. The purpose of TILA is ''to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.'' TILA section 102(a); 15 U.S.C. 1601(a). These stated purposes are tied to Congress's finding that ''economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit.'' TILA section 102(a). Thus, strengthened competition among financial institutions is a goal of TILA, achieved through the effectuation of TILA's purposes. In addition, TILA section 129B(a)(2) establishes a purpose of TILA sections 129B and 129C to ''assure consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive or abusive.'' 15 U.S.C. 1639b(a)(2).

Historically, TILA section 105(a) has served as a broad source of authority for rules that promote the informed use of credit through required disclosures and substantive regulation of certain practices. However, Dodd-Frank Act section 1100A clarified the Bureau's section 105(a) authority by amending that section to provide express authority to prescribe regulations that contain ''additional requirements'' that the Bureau finds are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. This amendment clarified the authority to exercise TILA section 105(a) to prescribe requirements beyond those specifically listed in the statute that meet the standards outlined in section 105(a). The Dodd-Frank Act also clarified the Bureau's rulemaking authority over certain high-cost mortgages pursuant to section 105(a). As amended by the Dodd-Frank Act, the Bureau's TILA section 105(a) authority to make adjustments and exceptions to the requirements of TILA applies to all transactions subject to TILA, except with respect to the substantive protections of TILA section 129, 15 U.S.C. 1639,[54] which apply to the high-cost mortgages referred to in TILA section 103(bb), 15 U.S.C. 1602(bb).

This final rule implements the Dodd-Frank Act requirements and establishes such additional requirements, adjustments, and exceptions as, in the Bureau's judgment, are necessary and proper to carry out the purposes of TILA, prevent circumvention or evasion thereof, or to facilitate compliance. In developing these aspects of the final rule pursuant to its authority under TILA section 105(a), the Bureau has considered the purposes of TILA, including ensuring meaningful disclosures, facilitating consumers' ability to compare credit terms, and helping consumers avoid the uninformed use of credit, as well as ensuring consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive or abusive. In developing this final rule and using its authority under TILA section 105(a), the Bureau also has considered the findings of TILA, including strengthening competition among financial institutions and promoting economic stabilization.

TILA Section 129B(c)

Dodd-Frank Act section 1403 amended TILA section 129B by imposing two limitations on loan originator compensation to reduce or eliminate steering incentives for residential mortgage loans.[55] 15 U.S.C. 1639b(c). First, it generally prohibits loan originators from receiving compensation for any residential mortgage loan that varies based on the terms of the loan, other than the amount of the principal. Second, TILA section 129B generally allows only consumers to compensate loan originators, though an exception permits other persons to pay ''an origination fee or charge'' to a loan originator, but only if two conditions are met: (1) The loan originator does not receive any compensation directly from a consumer; and (2) the consumer does not make an upfront payment of discount points, origination points, or fees (other than bona fide third-party fees that are not retained by the creditor, the loan originator, or the affiliates of either). The Bureau has authority to prescribe regulations to prohibit the above practices. In addition, TILA section 129B(c)(2)(B)(ii) authorizes the Bureau to create exemptions from the exception's second prerequisite, that the consumer must not make any upfront payments of points or fees, where the Bureau determines that doing so ''is in the interest of consumers and in the public interest.''

TILA Section 129(p)(2)

The Dodd-Frank Act amended TILA by adding, in new section 129, a broad mandate to prohibit certain acts and practices in the mortgage industry. In particular, TILA section 129(p)(2), as redesignated by Dodd-Frank Act section 1433(a) and amended by Dodd-Frank Act section 1100A, requires the Bureau to prohibit, by regulation or order, acts or practices in connection with mortgage loans that the Bureau finds to be unfair, deceptive, or designed to evade the provisions of HOEPA. 15 U.S.C. 1639(p)(2). Likewise, TILA requires the Bureau to prohibit, by regulation or order, acts or practices in connection with the refinancing of mortgage loans that the Bureau finds to be associated with abusive lending practices, or that are otherwise not in the interest of the consumer. *Id.*

The authority granted to the Bureau under TILA section 129(p)(2) is broad.

[54] TILA section 129 contains requirements for certain high-cost mortgages, established by HOEPA, which are commonly called HOEPA loans.

[55] Section 1403 of the Dodd-Frank Act also added new TILA section 129B(c)(3), which requires the Bureau to prescribe regulations to prohibit certain kinds of steering, abusive or unfair lending practices, mischaracterization of credit histories or appraisals, and discouraging consumers from shopping with other mortgage originators. 15 U.S.C. 1639b(c)(3). This final rule does not address those provisions. Because they are structured as a requirement that the Bureau prescribe regulations establishing the substantive prohibitions, notwithstanding Dodd-Frank Act section 1400(c)(3), 15 U.S.C. 1601 note, the Bureau believes that the substantive prohibitions cannot take effect until the regulations establishing them have been prescribed and taken effect. The Bureau intends to prescribe such regulations in a future rulemaking. Until such time, no obligations are imposed on mortgage originators or other persons under TILA section 129B(c)(3).

It reaches mortgage loans with rates and fees that do not meet HOEPA's rate or fee trigger in TILA section 103(bb), 15 U.S.C. 1602(bb), as well as mortgage loans not covered under that section. TILA section 129(p)(2) is not limited to acts or practices by creditors, or to loan terms or lending practices.

TILA Section 129B(e)

Dodd-Frank Act section 1405(a) amended TILA to add new section 129B(e), 15 U.S.C. 1639b(e). That section, as amended by Dodd-Frank Act section 1100A, provides for the Bureau to prohibit or condition terms, acts, or practices relating to residential mortgage loans on a variety of bases, including when the Bureau finds the terms, acts, or practices are not in the interest of the consumer. In developing proposed rules under TILA section 129B(e), the Bureau has considered all of the bases for its authority set forth in that section.

TILA Section 129C(d)

Dodd-Frank Act section 1414(a) amended TILA to add new section 129C(d), 15 U.S.C. 1639c(d). That section prohibits the financing of certain single-premium credit insurance products. As discussed more fully in the section-by-section analysis below, the Bureau is proposing to implement this prohibition in new § 1026.36(i).

TILA Section 129C(e)

Dodd-Frank Act section 1414(a) amended TILA to add new section 129C(e), 15 U.S.C. 1639c(e). That section restricts mandatory arbitration agreements in residential mortgage loans and extensions of open-end credit secured by the consumer's principal dwelling. It also prohibits provisions of these loans and related agreements from being applied or interpreted to bar a consumer from bringing a Federal claim in court. As discussed more fully in the section-by-section analysis below, the Bureau is proposing to implement these restrictions in new § 1026.36(h).

B. The Dodd-Frank Act

Section 1022(b)(1) of the Dodd-Frank Act authorizes the Bureau to prescribe rules ''as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws, and to prevent evasions thereof.'' 12 U.S.C. 5512(b)(1). TILA and title X of the Dodd-Frank Act are Federal consumer financial laws. Accordingly, the Bureau is exercising its authority under Dodd-Frank Act section 1022(b)(1) to prescribe rules that carry out the purposes and objectives of TILA and title X and prevent evasion of those laws.

V. Section-by-Section Analysis of the Final Rule

This final rule implements new TILA sections 129B(b)(1), (b)(2), (c)(1), and (c)(2) and 129C(d) and (e), as added by sections 1402, 1403, and 1414(a) of the Dodd-Frank Act. As discussed in more detail in the section-by-section analysis of § 1026.36(f) and (g), TILA section 129B(b)(1) requires each mortgage originator to be qualified and include unique identification numbers on loan documents. As discussed in more detail in the section-by-section analysis of § 1026.36(d)(1) and (2), TILA section 129B(c)(1) and (2) prohibits ''mortgage originators'' in ''residential mortgage loans'' from receiving compensation that varies based on loan terms and from receiving origination charges or fees from persons other than the consumer except in certain circumstances. Additionally, as discussed in more detail in the section-by-section analysis of § 1026.36(i), TILA section 129C(d) creates prohibitions on single-premium credit insurance. As discussed in the section-by-section analysis of § 1026.36(h), TILA section 129C(e) provides restrictions on mandatory arbitration agreements and waivers of Federal claims. Finally, as discussed in more detail in the section-by-section analysis of § 1026.36(j), TILA section 129B(b)(2), requires the Bureau to prescribe regulations requiring depository institutions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such depository institutions, the subsidiaries of such institutions, and the employees of such institutions or subsidiaries with the requirements of TILA section 129B and the registration procedures established under section 1507 of the SAFE Act, 12 U.S.C. 5101 *et seq.*

Section 1026.25 Record Retention

Existing § 1026.25 requires creditors to retain evidence of compliance with Regulation Z. The Bureau proposed adding § 1026.25(c)(2) to establish record retention requirements for compliance with the loan originator compensation restrictions in TILA section 129B as implemented by § 1026.36(d). Proposed section 1026.25(c)(2) would have: (1) Extended the time period for retention by creditors of compensation-related records from two years to three years; (2) required loan originator organizations (*i.e.,* generally, mortgage broker companies) to maintain certain compensation-related records for three years; and (3) clarified the types of compensation-related records that are required to be maintained under the rule. Proposed § 1026.25(c)(3) would have required creditors to maintain records evidencing compliance with the requirements related to discount points and origination points or fees set forth in proposed § 1026.36(d)(2)(ii).

25(a) General Rule

Existing comment 25(a)–5 clarifies the nature of the record retention requirements under § 1026.25 as applied to Regulation Z's loan originator compensation provisions. The comment provides that, for each transaction subject to the loan originator compensation provisions in § 1026.36(d)(1), a creditor should maintain records of the compensation it provided to the loan originator for the transaction as well as the compensation agreement in effect on the date the interest rate was set for the transaction. The comment also states that where a loan originator is a mortgage broker, a disclosure of compensation or other broker agreement required by applicable State law that complies with § 1026.25 is presumed to be a record of the amount actually paid to the loan originator in connection with the transaction.

The Bureau proposed new § 1026.25(c)(2), which sets forth certain new record retention requirements for compensation paid to loan originators, as discussed below. The Bureau also proposed new comments 25(c)(2)–1 and –2, which incorporate substantially the same interpretations as existing comment 25(a)–5. For the sake of improved organization of the commentary and to prevent duplication, the Bureau proposed to remove existing comment 25(a)–5. No substantive change was intended by this proposal. The Bureau received no public comments on the proposal to remove comment 25(a)–5. Therefore, this final rule is removing comment 25(a)–5 as unnecessary, consistent with the proposed rule.

25(c) Records Related to Certain Requirements for Mortgage Loans

25(c)(2) Records Related to Requirements for Loan Originator Compensation

Three-Year Record Retention

TILA does not contain requirements to retain specific records, but § 1026.25 requires creditors to retain evidence of compliance with Regulation Z for two years after the date disclosures are required to be made or action is required to be taken. Section 1404 of the

Dodd-Frank Act amended TILA section 129B, which imposes substantive restrictions on loan originator compensation and provides civil liability for any mortgage originator for failure to comply with the requirements of TILA section 129B and any of its implementing regulations. 15 U.S.C. 1639b(d). Section 1416(b) of the Dodd-Frank Act amended section 130(e) of TILA to provide a three-year limitations period for civil actions alleging a violation of certain sections of TILA, including section 129B concerning loan originator compensation, beginning on the date of the occurrence of the violation. 15 U.S.C. 1640(e). Prior to amendment by the Dodd-Frank Act, the limitations period for individual actions alleging violations of TILA was generally one year. 15 U.S.C. 1640(e) (2008). In view of the statutory changes to TILA, the provisions of existing § 1026.25, which impose a two-year record retention period, do not reflect the applicable limitations period for causes of action that may be brought under TILA section 129B. Moreover, the record retention provisions in § 1026.25 currently are limited to creditors, whereas the compensation restrictions in TILA section 129B, as added by the Dodd-Frank Act, cover all mortgage originators and not solely creditors.

To reflect these statutory changes, the Bureau proposed § 1026.25(c)(2), which would have made two changes to the existing record retention provisions. First, the proposed rule would have required that a creditor maintain records sufficient to evidence the compensation it pays to a loan originator and the governing compensation agreement, for three years after the date of payment. Second, the proposed rule would have required a loan originator organization to maintain for three years records of the compensation: (1) It receives from a creditor, a consumer, or another person; and (2) it pays to any individual loan originators. The loan originator organization also must maintain the compensation agreement that governs those receipts or payments for three years after the date of the receipts or payments. The Bureau proposed these changes pursuant to its authority under section 105(a) of TILA to prevent circumvention or evasion of TILA by requiring records that can be used to establish compliance. The Bureau stated its belief that these proposed modifications would ensure records associated with loan originator compensation are retained for a time period commensurate with the statute of limitations for causes of action under TILA section 130 and are readily available for examination. In addition, the Bureau stated its belief that the modifications are necessary to prevent circumvention of and to facilitate compliance with TILA.

The Bureau recognized that increasing the period a creditor must retain records for specific information related to loan originator compensation from two years, as currently provided in Regulation Z, to three years may impose some marginal increase in the creditor's compliance burden in the form of incremental cost of storage. The Bureau stated its belief, however, that creditors should be able to use existing recordkeeping systems to maintain the records for an additional year at minimal cost. Similarly, although loan originator organizations would incur some costs to establish and maintain recordkeeping systems, the Bureau expected that loan originator organizations would be able to adopt at minimal cost their existing recordkeeping systems to serve these newly required purposes. During the Small Business Review Panel, the Small Entity Representatives were asked about their current record retention practices and the potential impact of the proposed enhanced record retention requirements. Of the few Small Entity Representatives that provided feedback on the issue, one creditor Small Entity Representative stated that it maintained detailed records of compensation paid to all of its employees and that a regulator already reviews its compensation plans regularly. Another creditor Small Entity Representative reported that it did not believe that the proposed record retention requirement would require it to change its current practices.

In addition, the Bureau recognized that applying the existing two-year record retention period to information specified in § 1026.25(c)(2) could adversely affect the ability of consumers to bring actions under TILA. As the Bureau stated in the proposal, the extension also would serve to reduce litigation risk and maintain consistency between creditors and loan originator organizations. The Bureau therefore believed that it was appropriate to expand the time period for record retention to effectuate the three-year statute of limitations period established by Congress for actions against loan originators under section 129B of TILA.

Most commenters agreed that extending the retention period from two years to three years would not significantly increase the cost of compliance. Though some commenters opined that the changes in § 1026.25(c) would significantly increase their compliance burden, those comments appeared to be directed to the proposed record retention provisions related to proposed restrictions on discount points and origination points or fees in proposed § 1026.36(d)(2)(ii). Because the Bureau is not finalizing in this rule the points and fees proposal (or the attendant record retention requirement), the additional record retention requirement imposed by this final rule is minimal.

The Bureau invited public comment on whether a record retention period of five years, rather than three years, would be appropriate. The Bureau explained that relevant actions and compensation practices that must be evidenced in retained records may in some cases occur prior to the beginning of the three-year period of enforceability that applies to a particular transaction. In addition, the running of the three-year period may be tolled under some circumstances, resulting in a period of enforceability that ends more than three years following an occurrence of a violation of applicable requirements. Accordingly, the proposal stated that a record retention period that is longer than three years may help ensure that consumers are able to avail themselves of TILA protections while imposing minimal incremental burden on creditors and loan originators. The Bureau noted that many State and local laws related to transactions involving real property may set a record retention period, or may depend on the information being available, for five years. Additionally, a five-year record retention period would be consistent with proposed provisions in the Bureau's 2012 TILA–RESPA Proposal.

Most commenters objected to a five-year record retention period as overly burdensome. In addition, the implementing regulations of the Paperwork Reduction Act (PRA) require that there be a showing of ''substantial need'' to impose a record retention requirement of longer than three years. 5 CFR 1320.5(d)(2)(iv). Given the PRA's preference for retention periods of three years or less, the Bureau is adopting § 1026.25(c)(2)'s three-year retention period as proposed, notwithstanding some of the noted advantages of a longer retention period.[56]

[56] The language of § 1025(c)(2)(i) is revised slightly from the proposal for the sake of simplicity. The proposal would have required a creditor to maintain records reflecting compensation paid to ''a loan originator organization or the creditor's individual loan originators.'' The final rule requires a creditor to maintain records reflecting compensation paid ''to a loan originator, as defined in § 1026.36(a)(1).'' No substantive change is intended.

Application to Loan Originator Organizations

The Bureau stated in the proposal that it would be necessary to require both creditors and loan originator organizations to retain for three years evidence of compliance with the requirements of § 1026.36(d)(1). Although creditors would retain some of the records needed to demonstrate compliance with TILA section 129B and its implementing regulations, in some circumstances, the records would be available solely from the loan originator organization. For example, if a creditor compensates a loan originator organization for originating a transaction and the loan originator organization in turn allocates a portion of that compensation to an individual loan originator as a commission, the creditor may not possess a copy of the commission agreement setting forth the arrangement between the loan originator organization and the individual loan originator or any record of the payment of the commission. The Bureau stated that applying this requirement to both creditors and loan originator organizations would prevent circumvention of and facilitate compliance with TILA, as amended by the Dodd-Frank Act.

The Bureau did not receive any comments regarding the extension of the record retention requirements to loan originator organizations. Because the Bureau continues to believe that requiring loan originator organizations to retain records related to compensation will facilitate compliance with TILA, the Bureau is adopting § 1026.25(c)(2)'s applicability to loan originator organizations as proposed.

Exclusion of Individual Loan Originators

Proposed § 1026.25(c)(2) would not have applied Regulation Z recordkeeping requirements to individual loan originators. Although section 129B(d) of TILA, as added by the Dodd-Frank Act, permits consumers to bring actions against mortgage originators (which include individual loan originators), the Bureau stated its belief that applying the record retention requirements of § 1026.25 to individual loan originators is unnecessary. Under § 1026.25 as proposed, loan originator organizations and creditors would have been required to retain certain records regarding all of their individual loan originators. The preamble stated that applying the same record retention requirements to the individual loan originator employees themselves would be duplicative. In addition, such a requirement might not be feasible in all cases, because individual loan originators might not have access to the types of records required to be retained under § 1026.25, particularly after they cease to be employed by the creditor or loan originator organization. Under the proposal, an individual loan originator who is a sole proprietor, however, would have been responsible for compliance with provisions that apply to the proprietorship (which is a loan originator organization) and, as a result, is responsible for compliance with the record retention requirements. Similarly, a natural person who is a creditor would have been subject to the requirements that apply to creditors.

The Bureau did not receive comments on the exclusion of individual loan originators. For the reasons discussed above, the Bureau is adopting § 1026.25(c)(2) without making it applicable to individual loan originators, as proposed. The Bureau notes that while the preamble to the proposal discussed individual loan originator employees, the exclusion applies to all individual loan originators, as that term is defined in § 1026.36(a)(1), whether or not employees.

Substance of Record Retention Requirements

As discussed above, proposed § 1026.25(c)(2) would have made two changes to the existing record retention provisions. First, § 1026.25(c)(2)(i) would have required a creditor to maintain for three years records sufficient to evidence all compensation it pays to a loan originator and a copy of the governing compensation agreement. Second, § 1026.25(c)(2)(ii) would have required a loan originator organization to maintain for three years records of all compensation that it receives from a creditor, a consumer, or another person or that it pays to its individual loan originators and a copy of the compensation agreement that governs those receipts or payments.

Proposed comment 25(c)(2)–1.i would have clarified that, under § 1026.25(c)(2), records are sufficient to evidence that compensation was paid and received if they demonstrate facts enumerated in the comment. The comment gives examples of the types of records that, depending on the facts and circumstances, may be sufficient to evidence compliance. One commenter expressed concern that the comment could be read to require retention of *all* records listed; however, the comment clearly states that the records listed are examples only and what records would be sufficient would be dependent on the facts and circumstances and would vary on a case-by-case basis. To prevent any uncertainty, however, the comment is clarified to describe which records might be sufficient depending on the type of compensation at issue in certain circumstances. For example, the comment explains that, for compensation in the form of a contribution to or benefit under a designated tax-advantaged retirement plan, records to be maintained might include copies of required filings under other applicable statutes relating to such plans, copies of the plan and amendments thereto and the names of any loan originators covered by such plans, or determination letters from the Internal Revenue Service (IRS) regarding such plans. The Bureau is also clarifying the comment by removing the reference to certain agreements being ''presumed'' to be a record of the amount of compensation actually paid to the loan originator. Instead, as revised, the comment provides that such agreements are a record of the amount actually paid to the loan originator unless actual compensation deviates from the amount in the disclosure or agreement.

The Bureau is further revising comment 25(c)(2)–1.i to indicate that if compensation has been decreased to defray the cost, in whole or part, of an unforeseen increase in an actual settlement cost over an estimated settlement cost disclosed to the consumer pursuant to section 5(c) of RESPA (or omitted from that disclosure), records to be maintained are those documenting the decrease in compensation and the reasons for it. This revision corresponds with changes to the commentary to § 1026.36(d)(1) clarifying that the section prohibits a loan originator from reducing its compensation to bear the cost of a change in transaction terms except to defray such unforeseen increases in settlement cost. Retaining these records will allow for agency examination about whether a particular decrease in loan originator compensation is truly based on unforeseen increases to settlement costs, *i.e.,* whether it indicates a pattern or practice of the loan originator repeatedly decreasing loan originator compensation to defray the costs of pricing concessions for the same categories of settlement costs across multiple transactions. Like other records sufficient to evidence compensation paid to loan originators, the Bureau believes that records of decreases in loan originator compensation in unforeseen circumstances to defray the costs of increased settlement cost above those estimated should be retained for a time period commensurate with the statute of limitations for causes of action under TILA section 130 and be readily available for examination, which is necessary to prevent circumvention of and to facilitate compliance with TILA.

Proposed comment 25(c)(2)–1.ii would have clarified that the compensation agreement, evidence of which must be retained under 1026.25(c)(2), is any agreement, written or oral, or course of conduct that establishes a compensation arrangement between the parties. Proposed comment 25(c)(2)–1.iii provided an example where the expiration of the three-year retention period varies depending on when multiple payments of compensation are made. Proposed comment 25(c)(2)–2 provided an example of retention of records sufficient to evidence payment of compensation. The Bureau did not receive any public comment on these proposed comments. The Bureau is adopting comments 25(c)(2)–1.iii and 25(c)(2)–2 as proposed. Comment 25(c)(2)–1.ii is revised slightly from the proposal to clarify that where a compensation agreement is oral or based on a course of conduct and cannot itself be maintained, the records to be maintained are those, if any, evidencing the existence or terms of the oral or course of conduct compensation agreement.

25(c)(3) Records Related to Requirements for Discount Points and Origination Points or Fees

Proposed § 1026.25(c)(3) would have required creditors to retain records pertaining to compliance with the provisions of proposed § 1026.36(d)(2)(ii), regarding the payment of discount points and origination points or fees. Because the Bureau is not adopting proposed § 1026.36(d)(2)(ii), as discussed in the section-by-section analysis of that section, below, the Bureau is not adopting proposed § 1026.25(c)(3).

Section 1026.36 Prohibited Acts or Practices and Certain Requirements for Credit Secured by a Dwelling

The Bureau is redesignating comment 36–1 as comment 36(b)–1. The analysis of § 1026.36(b) discusses comment 36(b)–1 in further detail.

Existing comment 36–2 provides that the final rules on loan originator compensation in § 1026.36(d) and (e), which were originally published in the **Federal Register** on September 24, 2010, apply to transactions for which the creditor receives an application on or after the effective date, which was in April 2011. The comment further provides an example for the treatment of applications received on March 25 or on April 8 of 2011. The Bureau is removing this comment because it is no longer relevant.

36(a) Definitions

TILA section 103(cc), which was added by section 1401 of the Dodd-Frank Act, contains definitions of ''mortgage originator'' and ''residential mortgage loan.'' These definitions are important to determine the scope of new substantive TILA requirements added by the Dodd-Frank Act, including, the scope of restrictions on loan originator compensation; the requirement that loan originators be ''qualified;'' policies and procedures to ensure compliance with various requirements; and the prohibitions on mandatory arbitration, waivers of Federal claims, and single premium credit insurance. *See* TILA sections 129B(b)(1) and (2), (c)(1) and (2) and 129C(d) and (e), as added by sections 1402, 1403, and 1414(a) of the Dodd-Frank Act. In the proposal, the Bureau noted that the statutory definitions largely parallel analogous definitions in the 2010 Loan Originator Final Rule and other portions of Regulation Z for ''loan originator'' and ''consumer credit transaction secured by a dwelling,'' respectively.

The proposal explained the Bureau's intent to retain the existing regulatory terms to maximize continuity, while adjusting the regulation and commentary to reflect differences between the existing Regulation Z definition of ''loan originator'' and the new TILA definition of ''mortgage originator'' and to provide additional interpretation and clarification. In the case of ''residential mortgage loan'' and ''consumer credit transaction secured by a dwelling,'' the Bureau did not propose to make any changes to the regulation or commentary.

Finally, the proposal would have added three new definitions germane to the scope of the compensation restrictions and other aspects of the proposal: (1) ''Loan originator organization'' in new § 1026.36(a)(1)(ii); (2) ''individual loan originator'' in new § 1026.36(a)(1)(iii); and (3) ''compensation'' in new § 1026.36(a)(3).

As noted in part III.F above, the Bureau separately is adopting several other final rules and issuing one proposal, all relating to mortgage credit, to implement requirements of title XIV of the Dodd-Frank Act. Two of those final rules, the 2013 ATR Final Rule and 2013 HOEPA Final Rule, require creditors to calculate the points and fees charged in connection with a transaction to determine whether certain coverage tests under those rules have been met. Both of these rules generally require that creditors include in the points and fees calculation all ''compensation'' paid directly or indirectly by a consumer or creditor to a ''loan originator,'' [57] terms that are defined broadly in this final rule. While the Bureau believes that such broad definitions are well-suited to achieving the Dodd-Frank Act's goals for this rulemaking, the Bureau believes that it may be appropriate to interpret the terms more narrowly in the 2013 ATR and HOEPA Final Rules. The present rule, for example, contains a prohibition against paying compensation to a loan originator based upon loan terms. It would entirely defeat the purpose of this rule if a creditor were free to pay discretionary bonuses after a transaction was consummated based upon the terms of that transaction and thus for purposes of this rule the term compensation cannot be limited to payments made, or determined, at particular moments in time. In contrast, in the ATR and HOEPA contexts, the terms loan originator and compensation are used to define a discrete input into the points and fees calculation that needs to be made at a specific moment in time in order to determine whether the coverage tests are met. Thus, § 1026.32(b)(1)(ii) and associated commentary, as adopted in the 2013 ATR Final Rule, provide that compensation must be included in points and fees for a particular transaction only if such compensation can be attributed to that particular transaction at the time the interest rate is set. The commentary also provides examples of compensation types (*e.g.,* base salary) that, in the Bureau's view, are not attributable to a particular transaction and therefore are excluded from the points and fees calculation.

At the same time the Bureau issued the 2013 ATR and HOEPA Final Rules, the Bureau also issued the 2013 ATR Concurrent Proposal, which seeks public comment on other aspects of the definitions of ''compensation'' and ''loan originator'' for purposes of the points and fees calculation. Among other things, the proposal solicits comment on whether additional guidance would be useful in the ATR and HOEPA contexts for the treatment of compensation paid to persons who are ''loan originators'' but who are not employed by a creditor or mortgage

[57] Specifically, as adopted in the 2013 ATR Final Rule, § 1026.32(b)(1)(ii) provides that points and fees for a closed-end credit transaction include ''[a]ll compensation paid directly or indirectly by a consumer or creditor to a loan originator, as defined in § 1026.36(a)(1), that can be attributed to that transaction at the time the interest rate is set.''

broker (*e.g.,* certain employees of manufactured home retailers, servicers, and other parties that do not meet exclusions specified in this rule). Because of the overlapping issues addressed in these rules, the Bureau is carefully considering how these rules interact and requests comment in the concurrent proposal on whether there are additional factors that the Bureau should consider to harmonize the various provisions.

36(a)(1) Loan Originator

36(a)(1)(i)

Existing § 1026.36(a)(1) defines the term ''loan originator'' for purposes of § 1026.36. Section 1401 of the Dodd-Frank Act defines the term ''mortgage originator'' in TILA section 103(cc)(2). As discussed further below, both definitions are similar to but not identical with the SAFE Act definition of ''loan originator'' for purposes of national registration and licensing requirements.

The proposal would have retained the term ''loan originator'' in § 1026.36, but would have made some changes to the definition and associated commentary to reflect certain distinctions in the Dodd-Frank Act's definition of mortgage originator. In the proposed rule, the Bureau stated that the regulatory definition of ''loan originator'' was generally consistent with the statutory definition of ''mortgage originator.'' The Bureau also noted ''loan originator'' has been in wide use since first adopted by the Board in 2010. The Bureau posited that changes to the terminology would likely require stakeholders to make corresponding revisions in many aspects of their operations, including policies and procedures, compliance materials, and software and training.

A few credit union commenters urged the Bureau to use ''mortgage originator'' instead of ''loan originator'' to distinguish the terminology and its scope of coverage from those of the SAFE Act and its implementing regulations, Regulations G and H, which refer to a covered employee at a non-depository institution as a ''loan originator'' and a covered employee at a depository institution as a ''mortgage loan originator.'' The Bureau has considered the comment, but continues to believe that the burdens outlined in the proposal would outweigh any of the potential benefits garnered by signaling differences in meaning. Thus, the final rule retains the terminology ''loan originator.''

Although the Bureau proposed to retain the term ''loan originator,'' it did propose changes to the definition of the term in § 1026.36(a)(1) to reflect the scope of the term ''mortgage originator'' under section 103(cc)(2) of TILA. Specifically, the statute states ''mortgage originator'':

(A) means any person who, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain—(i) takes a residential mortgage loan application; (ii) assists a consumer in obtaining or applying to obtain a residential mortgage loan; or (iii) offers or negotiates terms of a residential mortgage loan;

(B) includes any person who represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such person can or will provide any of the services or perform any of the activities described in subparagraph A.

TILA section 103(cc)(4) further defines ''assists a consumer in obtaining or applying to obtain a residential mortgage loan'' to include, among other things, advising on terms, preparing loan packages, or collecting information on behalf of the consumer. TILA section 103(cc)(2)(C) through (G) provides certain exclusions from the general definition of mortgage originator, including an exclusion for certain administrative and clerical staff. These various elements are discussed further below.

Existing § 1026.36(a)(1) defines ''loan originator'' as: ''With respect to a particular transaction, a person who for compensation or other monetary gain, or in expectation of compensation or other monetary gain, arranges, negotiates, or otherwise obtains an extension of consumer credit for another person.'' The Bureau proposed to redesignate § 1026.36(a)(1) as § 1026.36(a)(1)(i) and explained that the phrase ''arranges, negotiates, or otherwise obtains an extension of consumer credit for another person'' in the definition of ''loan originator'' encompassed a broad variety of activities [58] including those described in new TILA section 103(cc)(2) with respect to the definition of ''mortgage originator.''

Nevertheless, the Bureau proposed to revise the general definition of loan originator and associated commentary to include a person who ''takes an application, arranges, offers, negotiates, or otherwise obtains an extension of credit for another person'' as well as to make certain other revisions to the existing definition of ''loan originator'' to reflect new TILA section 103(cc)(2). The proposal explained that the Bureau interpreted ''arranges'' broadly to include any task that is part of the process of originating a credit transaction, including advertising or communicating to the public that one can perform loan origination services and referring a consumer to any other person who participates in the origination process.[59] Participating in the origination process, in turn, includes any task involved in the loan origination process, from commencing the process of originating a transaction through arranging consummation of the credit transaction (subject to certain exclusions). That is, the definition includes both persons who participate in arranging a credit transaction with others and persons who arrange the transaction entirely, including initially contacting and orienting the consumer to a particular loan originator's or creditor's origination process, assisting the consumer to apply for a loan, taking the application, offering and negotiating transaction terms, and making arrangements for consummation of the credit transaction.

The Bureau also stated that ''arranges, negotiates, or otherwise obtains an extension of consumer credit for another person'' in the existing definition of ''loan originator'' already included the following activities specified in TILA section 103(cc)(2)(A): (1) Taking a loan application; (2) assisting a consumer in obtaining or applying to obtain a loan; and (3) offering or negotiating terms of a loan. Nevertheless, to remove any uncertainty and facilitate compliance, the Bureau proposed to add ''takes an application'' and ''offers,'' as used in TILA section 103(cc)(2)(A), to the definition of ''loan originator'' in § 1026.36(a) to state expressly that these core elements were included in the definition of ''loan originator.'' Similarly, proposed comment 36(a)–1.i.A would have stated that ''loan originator'' includes persons who assist a consumer in obtaining or applying to obtain a loan, including each specific activity identified in the statute as included in the meaning of ''assist.''

Most commenters did not focus on the proposed revised definition as a whole, but rather on specific activities that they

[58] This view is consistent with the Board's related rulemakings on this issue. *See* 75 FR 58509, 58518 (Sept. 24, 2010); 74 FR 43232, 43279 (Aug. 26, 2009); 73 FR 44522, 44565 (July 30, 2008); 73 FR 1672, 1726 (Jan. 9, 2008); 76 FR 27390, 27402 (May 11, 2011).

[59] Arrange is defined by the Merriam-Webster Online Dictionary to include: (1) ''To put into a proper order or into a correct or suitable sequence, relationship, or adjustment''; (2) ''to make preparations for''; and (3) ''to bring about an agreement or understanding concerning.'' *Arrange Definition,* Merriam-Webster.com, *available at: http://www.merriam-webster.com/dictionary/arrange.*

believed should or should not be included in the general definition of loan originator. Manufactured housing financers generally commented that the proposed definition should include a more expansive list of specific activities that conform to those detailed by HUD's SAFE Act rulemakings for inclusion or exclusion from the definition of loan originator in Regulation H and its appendix A, with some modifications to exclude more employee activities. Some non-depository institution commenters stated that the proposed definition of ''loan originator'' should be more closely aligned with the SAFE Act definition. Many depository institution commenters stated that the proposed definition was overly broad because it included persons who normally would not be considered loan originators and should instead be narrowed to be similar to the definition of ''mortgage loan originator'' specified by the Federal banking agencies in their regulations implementing the SAFE Act. *See* 75 FR 44656 (July 28, 2010).

As discussed in the proposal and in more detail below, the Dodd-Frank Act gives broad meaning to the term ''mortgage originator,'' and the Bureau therefore believes it appropriate to give the regulatory term ''loan originator'' equally broad meaning. In light of commenters' concerns regarding particular activities covered by the definition, the Bureau also believes more clarity should be provided regarding the specific activities that are included or excluded by the definition of loan originator. In the following discussion, the Bureau first addresses why it is adopting a broad definition of ''loan originator'' and then explains specific elements of the definition and related comments.

Congress defined ''mortgage originator'' for the purposes of TILA, as amended by the Dodd-Frank Act, to be broader than its definition of ''loan originator'' in the SAFE Act, which it enacted just two years previously. Moreover, although Congress adopted legislation that effectively codified major provisions of the Board's 2009 Loan Originator Proposal, Congress used broader language than the Board had proposed.[60] Under the Dodd-Frank Act amendments to TILA section 103(cc)(2)(A), a person is a ''mortgage originator'' for TILA purposes if the person engages in *any one* of the following activities for, or in expectation of, direct or indirect compensation or gain: (1) Takes a loan application; (2) assists a consumer in obtaining or applying to obtain a loan; or (3) offers or negotiates terms of a loan. Under the SAFE Act a person is a ''loan originator'' *only* if the person engages in both of the following activities: (1) Takes a residential mortgage loan application; and (2) offers or negotiates terms of a residential mortgage loan for compensation or gain. 12 U.S.C. 5102(4).

Thus, there are three main differences between the two definitions, in terms of the activities involved.[61] First, any individual element under TILA, as amended by the Dodd-Frank Act, qualifies the person as a mortgage originator, while the SAFE Act requires that an individual must participate in both taking an application and offering or negotiating terms to trigger the statute's requirements. Second, the TILA definition of ''mortgage originator'' is separately triggered by assisting a consumer in obtaining or applying to obtain a loan, which is further defined under TILA to include, among other things, advising on terms, preparing loan packages, or collecting information on behalf of the consumer, while the SAFE Act does not specifically reference this activity. Third, ''mortgage originator'' under TILA section 103(cc)(2)(B) further includes ''any person who represents to the public through advertising or other means of communicating or providing information * * * that such person can or will provide any of the services or perform any of the activities'' described in TILA section 103(cc)(2)(A).

The Bureau believes that these differences between definitions evidence a congressional intention when enacting the Dodd-Frank Act to cast a wide net to ensure consistent regulation of a broad range of persons that may have financial incentives and opportunities to steer consumers to credit transactions with particular terms early in the origination process. The statutory definition even includes persons who simply inform consumers that they can provide mortgage origination services, prior to and independent of actually providing such services. The Bureau also believes that both TILA and the SAFE Act evidence a congressional concern specifically about the risk that trusted advisers or first-in-time service providers could steer consumers to particular credit providers, products, and terms. Thus, for instance, the Bureau notes that in both laws Congress specifically included real estate brokers that are compensated by a creditor or mortgage broker in the definitions of ''mortgage originator'' and ''loan originator'' respectively. 15 U.S.C. 1602(cc)(2)(D), 12 U.S.C. 5103(3)(A)(iii).

For the reasons stated above and as discussed more extensively below, the Bureau is redesignating § 1026.36(a)(1) as § 1026.36(a)(1)(i) and revising the general definition of loan originator in § 1026.36(a)(1)(i). The Bureau also is adopting additional provisions in, and commentary to, § 1026.36(a)(1) to provide further clarification and analysis for specific activities included or excluded from the definition of ''loan originator.'' As described further below, the Bureau is defining ''loan originator'' in § 1026.36(a)(1)(i) to include a person who takes an application, offers, arranges, assists a consumer in obtaining or applying to obtain, negotiates, or otherwise obtains or makes an extension of consumer credit for another person. The Bureau is also providing clarifications that address a variety of specific actions such as taking an application, management, underwriting, and administrative or clerical tasks, as well as the treatment of particular types of persons such as real estate brokers, seller financers, housing counselors, financial advisors, accountants, servicers and employees of manufactured home retailers. The revisions to § 1026.36(a)(1)(i) further clarify that, to be a loan originator, a person needs only to receive or expect to receive direct or indirect compensation in connection with performing loan origination activities. The revisions additionally remove the phrase ''with respect to a particular transaction'' from the existing definition to clarify that the definition applies to persons engaged in the activities it describes regardless of whether any specific consumer credit transaction is consummated. Moreover, comment 36(a)–1.i.B clarifies that the definition of loan originator includes not only employees but also agents and contractors of a creditor or mortgage broker that satisfy the definition.

Takes an Application, Offers, Arranges, Assists a Consumer, Negotiates, or Otherwise Obtains or Makes

As described above, TILA section 103(cc)(2) defines ''mortgage originator'' to include a person who ''takes a residential mortgage loan application,'' ''assists a consumer in obtaining or applying to obtain a residential mortgage loan,'' or ''offers or negotiates terms of a residential mortgage loan.''

[60] The Board's proposal defined a loan originator as one who for gain ''arranges, negotiates or otherwise obtains an extension of consumer credit.'' The Board finalized this definition in its 2010 Loan Originator Final Rule.

[61] Another difference, not pertinent here, is that the SAFE Act's ''loan originator'' includes only natural persons, whereas TILA's ''mortgage originator'' can include organizations.

TILA section 103(cc)(4) provides that a person ''assists a consumer in obtaining or applying to obtain a residential mortgage loan'' by taking actions such as ''advising on residential mortgage loan terms (including rates, fees, and other costs), preparing residential mortgage loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.''

The Bureau proposed comment 36(a)–1.i.A to provide further interpretation of the proposed phrase, ''takes an application, offers, arranges, negotiates, or otherwise obtains,'' to clarify the phrase's applicability in light of these statutory provisions. Specifically, the Bureau proposed to clarify in comment 36(a)–1.i.A that the definition of ''loan originator'' and, more specifically, ''arranges'' also includes all of the activities listed in TILA 103(cc)(4) that define the term ''assists a consumer in obtaining or applying for consumer credit,'' including advising on credit terms, preparing application packages (such as a loan or pre-approval application or supporting documentation), and collecting information on behalf of the consumer to submit to a loan originator or creditor. The comment also would have included any person that advertises or communicates to the public that such person can or will provide any of the listed services or activities. The Bureau addresses each of these and additional activities in the ''takes an application,'' ''offers, ''arranges,'' ''assists,'' and ''negotiates or otherwise obtains or makes'' analyses below.

Takes an application. The Bureau proposed to add ''takes an application,'' as used in the definition of ''mortgage originator'' in TILA section 103(cc)(2)(A), to the definition of ''loan originator'' in § 1026.36(a). A few industry groups and several manufactured housing financers raised concerns that the proposal did not define or provide any interpretation of the phrase. One manufactured housing financer commented that the mere physical act of writing (or typing) information onto an application form on behalf of a consumer was a purely administrative and clerical act that should not be considered taking an application. This commenter indicated that such activity serves the interest of low-income consumers who may be uncomfortable with the home buying and credit application processes. The commenter further noted that completing the application in this manner ensures that the credit information is accurately conveyed and clearly written to avoid unnecessary delays in the application process. Another industry group commenter suggested that, under the proposal, merely delivering a completed application to a loan officer, without more, would qualify as ''takes an application.''

In the proposal, the Bureau noted that, in connection with the application process, certain minor actions alone would not be included in the definition of loan originator. For instance, the proposal stated that physically handling a completed application form to deliver it to a loan officer would not constitute acting as a loan originator where the person performing the delivery does not assist the consumer in completing the application, process or analyze the information reflected in the application, or discuss specific transaction terms or products with the consumer. Instead, these activities would be considered administrative and clerical and thus within TILA section 103(cc)(2)(C)'s express exclusion from the definition of ''mortgage originator'' of persons who perform ''purely administrative and clerical tasks on behalf of mortgage originators.'' In light of the comments received, the Bureau is revising comment 36(a)–4.i in the final rule to state explicitly that such activities are not included in the definition of loan originator.

The Bureau believes, however, that filling out a consumer's application, inputting the information into an online application or other automated system, and taking information from the consumer over the phone to complete the application should be considered ''tak[ing] an application'' for the purposes of the rule. The Bureau believes that individuals performing these functions play an important enough role in the origination process that they should be subject to the requirements the Dodd-Frank Act establishes with respect to loan originators, including the prohibition on compensation that creates steering incentives. Consumers providing information for an application during the initial stages of the origination process are susceptible to steering influences that could be harmful. For example, the application taker could submit or characterize the application in a way that is more favorable to the application taker while limiting the consumer's options or qualifying the consumer for a transaction the consumer cannot repay. Or, when taking in the information provided by the consumer the application taker could encourage a consumer to seek certain credit terms or products. The Bureau is revising comment 36(a)–1.i.A and comment 36(a)–4.i to clarify which activities do or do not constitute ''tak[ing] an application'' by discussing how persons merely aiding a consumer to understand how to complete an application would not be engaged in taking an application, while persons who actually fill out the application are taking an application.

Offers. The Bureau proposed to revise the general definition of loan originator and associated commentary to include a person who ''offers'' an extension of credit. This revision would reflect new TILA section 103(cc)(2) that includes in the definition of ''mortgage originator'' persons who ''offer'' terms of a residential mortgage loan.

In proposed comment 36(a)–1 and the supplementary information of the proposal, the Bureau explained that ''arranges'' would also include any task that is part of the process of originating a credit transaction, including advertising or communicating to the public by a person that the person can perform loan origination services, as well as referring a consumer to any other person who participates in the origination process. Several industry associations, banks, and manufactured housing finance commenters urged the Bureau not to include in the definition of ''loan originator'' bank tellers, receptionists, customer service representatives, or others who periodically refer consumers to loan originators. A large bank commenter indicated that the TILA definition of mortgage originator does not expressly include employees who perform referral activities.

Prior to the transfer of TILA rulemaking authority to the Bureau, the Board interpreted the definition of loan originator to include referrals when such activity was performed for compensation or other monetary gain or in the expectation of compensation or other monetary gain. The Bureau further notes that HUD also interpreted the SAFE Act ''offers and negotiates'' to include referrals. Specifically, Regulation H, as restated by the Bureau, provides in 12 CFR 1008.103(c)(2)(i)(C) that an individual ''offers or negotiates terms of a residential mortgage loan for compensation or gain'' if the individual: * * * (C) Recommends, refers, or steers a borrower or prospective borrower to a particular lender or set of residential mortgage loan terms, in accordance with a duty to or incentive from any person other than the borrower or prospective borrower * * * . 76 FR 78483, 78493 (Dec. 19, 2011). *See also* 76 FR 38464, 38495 (June 30, 2011).

The Federal banking agencies, when implementing the SAFE Act, did not specifically address whether referral activities are included in ''offers or negotiates'' terms of a loan. However, the agencies noted that activities considered to be offering or negotiating loan terms do not require a showing that an employee received a referral fee. *See* 75 FR 44656 (July 28, 2010). Thus, the agencies appear to have contemplated that referral activity is included in the meaning of ''offers or negotiates'' terms of a loan.

To maintain consistency with Regulation H and to facilitate compliance, the Bureau interprets ''offers'' for purposes of the definition of loan originator in § 1026.36(a)(1) to include persons who: (1) Present for consideration by a consumer particular credit terms; or (2) recommend, refer, or steer a consumer to a particular loan originator, creditor, credit terms, or credit product. The Bureau believes that, even at initial stages of the mortgage origination process, persons who recommend, refer, or steer consumers to a particular loan originator, creditor, set of credit terms, or credit product could have influence over the particular credit products or credit terms that a consumer seeks or ultimately obtains. Moreover, because to be a loan originator someone who offers credit must do so for, or in the expectation of, direct or indirect compensation or gain, there not only is an incentive to steer the consumer to benefit the referrer but the referrer is also effectively participating in the extending of an offer of consumer credit on behalf of the person who pays the referrer's compensation. The Bureau believes that the statute was intended to reach such situations and that it appropriately regulates these activities without imposing significant burdens.[62]

For instance, most persons engaged in compensated referral activities (*e.g.,* employees being paid by their employers for referral activities) receive a flat fee for each referral. A flat fee is permissible under the existing and final rule, which in § 1026.36(d)(1) generally prohibits loan originators from receiving compensation that is based on a term of a transaction but permits compensation based on the amount of the transaction or on a flat per-transaction basis. Accordingly, application of the regulation will not require a change in compensation practices where referrers are compensated on a flat fee basis. However, if referrers were to receive compensation based on transaction terms, the Bureau believes such persons would also likely be incentivized to steer consumers to particular transaction terms that may be harmful to the consumers. Moreover, most consumers are likely unaware that the person referring or recommending a particular creditor or a particular credit product may have a financial incentive to do so. There is even less consumer sensitivity to these potential harms when a trusted advisor is engaged in such referral activity. As also discussed in the proposal, the Bureau believes that one of the primary focuses of the Dodd-Frank Act and this rulemaking is to prevent such incentives.

Similarly, the Bureau believes that provisions of the final rule requiring loan originators to be appropriately ''qualified'' under § 1026.36(f), with regard to background checks, character screening, and training of loan originators, also will not be significantly burdensome. The Bureau believes that many referrers employed by non-depository institutions likely already meet the rule's qualification requirements. States that follow the interpretation of the SAFE Act in Regulation H already require certain persons who refer consumers, according to a duty or incentive, to obtain a loan originator license. Furthermore, in contrast with Regulation H, as described above, many States have enacted a broader definition of loan originator than is required under the SAFE Act by using the disjunctive, *i.e.,* takes an application ''or'' offers or negotiates, with the result that persons who refer are already subject to State loan originator licensing requirements in those States even if they do not also ''take an application.''[63] Individuals who are licensed under the SAFE Act are not subject to additional substantive requirements to be ''qualified'' under this final rule, as discussed further in the section-by-section analysis of § 1026.36(f) and (g) concerning loan originator qualification requirements.

The Bureau additionally believes that employees of depository institutions likely also already meet many of the final rule's criminal background and fitness qualification requirements in new § 1026.36(f) because they are subject to background-check requirements under the Federal Deposit Insurance Act or Federal Credit Union Act. Moreover, the qualification training requirements of this final rule for depository institution loan originators specify that the training be commensurate with the individual's loan origination activities. Accordingly, training that fulfills the final rule's qualification requirements for persons whose only loan origination activities are referrals is relatively modest as also further discussed in the section-by-section analysis of § 1026.36(f) and related commentary.

As discussed further below, the Bureau is providing greater clarification in comment 36(a)–4 to explain that administrative staff who provide contact or general information about available credit in response to requests from consumers generally are not for that reason alone loan originators. For example, an employee who provides a loan originator's or creditor's contact information to a consumer in response to the consumer's request does not become a loan originator, provided that the teller or receptionist does not discuss particular credit terms and does not refer the consumer, based on the teller's or receptionist's assessment of the consumer's financial characteristics, to a certain loan originator or creditor seeking to originate particular transactions to consumers with those financial characteristics. In contrast, a referral occurs (and an employee is a loan originator) when, for example, a bank teller asks a consumer if the consumer is interested in refinance loans with low introductory rates and provides contact information for a loan originator based on the teller's assessment of information provided by the consumer or available to the teller regarding the consumer's financial characteristics.[64]

The Bureau is revising comment 36(a)–1.i.A.*1* to clarify that the definition of loan originator includes a person who refers a consumer (when the referral activities are engaged in for compensation or other monetary gain) to a loan originator or creditor or an

[62] The Bureau also believes that referral activities are encompassed within the language ''assists a consumer in obtaining or applying to obtain a residential mortgage loan'' in TILA section 103(cc)(2). TILA section 103(cc)(4) provides that '''a person assists a consumer in obtaining or applying to obtain a residential mortgage loan' by, among other things, advising on residential mortgage loan terms.* * *'' The Bureau believes that ''among other things'' encompasses referral, which is a form of advising a consumer on where to obtain consumer credit. To the extent there is any uncertainty with respect to whether a person engaging in referral activity for or in expectation of direct or indirect compensation is a loan originator, the Bureau is also exercising its authority under TILA section 105(a) to prescribe rules that contain additional requirements, differentiations, or other provisions. The Bureau believes that this adjustment is necessary or proper to effectuate the purposes of TILA and to prevent circumvention or evasion thereof.

[63] See the section-by-section analysis of § 1026.36(f) and (g) below for additional background on the SAFE Act.

[64] The Bureau believes that a referral based on the employee's assessment of the financial characteristics of the consumer occurs only if an individual in fact has the discretion to choose to direct a consumer to a particular loan originator.

employee, agent, or contractor of a loan originator or creditor. The Bureau is further clarifying the definition of ''referral'' as generally including any oral or written action directed to a consumer that can affirmatively influence the consumer to select a particular loan originator or creditor to obtain an extension of credit when the consumer will pay for such credit. In comment 36(a)–1.i.A.*2* the Bureau is clarifying that arranging a credit transaction is one of the activities that can make a person a ''loan originator.'' The Bureau is also clarifying in comment 36(a)–1.i.A.*4* that the definition of ''loan originator'' includes a person who presents for consideration by a consumer particular credit terms or communicates with a consumer for the purpose of reaching a mutual understanding about prospective credit terms.

The Bureau is revising comment 36(a)–4 to clarify that the loan originator definition, nevertheless, does not include persons who (whether or not for or in the expectation of compensation or gain): (1) Provide general explanations, information, or descriptions in response to consumer queries, such as explaining terminology or lending policies; (2) as employees of a creditor or loan originator, provide loan originator or creditor contact information in response to the consumer's request, provided that the employee does not discuss particular transaction terms and does not refer the consumer, based on the employee's assessment of the consumer's financial characteristics, to a particular loan originator or creditor seeking to originate particular transactions to consumers with those financial characteristics; (3) describe product-related services; or (4) explain or describe the steps that a consumer would need to take to obtain a credit offer, including providing general clarification on qualifications or criteria that would need to be met that is not specific to that consumer's circumstances.

Arranges. The Board's 2010 Loan Originator Final Rule defined ''loan originator'' in § 1026.36(a)(1) as: ''with respect to a particular transaction, a person who for compensation or other monetary gain, or in expectation of compensation or other monetary gain, arranges, negotiates, or otherwise obtains an extension of consumer credit for another person.'' The proposal would have broadly clarified ''arranges'' to include, for example, any part of the process of originating a credit transaction, including advertising or communicating to the public that one can perform origination services and referring a consumer to another person who participates in the process of originating a transaction. The clarification in proposed comment 36(a)–1.i.A would have included both persons who participate in arranging a credit transaction with others and persons who arrange the transaction entirely, including through initial contact with the consumer, assisting the consumer to apply for mortgage credit, taking the application, offering and negotiating transaction terms, and making arrangements for consummation of the credit transaction.

The term ''arranges'' is not part of the definition of mortgage originator in TILA section 103(cc)(2)(A) as enacted by the Dodd-Frank Act. Nevertheless, the Bureau proposed to preserve the existing regulation's use of the term and, as noted, indicated its belief that the term subsumes many of the activities described in the statutory definition. The Bureau did not propose to include the statutory ''assists a consumer'' element, for example, for this reason. As discussed below, however, the Bureau is including that element in the final definition. The Bureau therefore considered removing ''arranges'' from the definition in this final rule. To prevent any inference that the final rule narrows the definition of loan originator, however, the Bureau has kept the term in the final rule.

Several industry groups and a manufactured housing finance commenter stated that the Bureau's proposed interpretation of ''arranges'' was overbroad. Several commenters questioned whether ''arranges'' would include activities typically performed by or unique to certain commonly recognized categories of industry personnel. Specifically, these commenters sought clarification on whether the term's scope would include activities typically performed by underwriters, senior managers who work on underwriting and propose counter-offers to be offered to consumers, loan approval committees that approve or deny transactions (with or without conditions or counter-offers) and communicate this information to loan officers, processors who assemble files for submission to underwriters, loan closers, and individuals involved with secondary market pricing who establish rates that the creditor's loan officers quote to the public.

The Bureau believes the meaning of ''arranges'' does include activities performed by these persons when those activities amount to offering or negotiating credit terms available from a creditor with consumers or assisting a consumer in applying for or obtaining an extension of credit, and thus also amount to other activities specified in the definition of loan originator. However, most of the activities these persons typically engage in would likely not amount to offering or negotiating and thus would likely not be included in the definition of ''loan originator.'' Comment 36(a)–4 and the corresponding analysis below on management, administrative, and clerical tasks provide additional clarifications on which of these and similar activities are not included in the definition of loan originator.

In proposed comment 36(a)–1 and the supplementary information of the proposal, the Bureau explained that ''arranges'' would also include any task that is part of the process of originating a credit transaction, including advertising or communicating to the public by a person that the person can perform loan origination services, as well as referring a consumer to any other person who participates in the origination process. The Bureau is finalizing the definition of ''loan originator'' in § 1026.36(a)(1)(i) and in related comment 36(a)–1.i.A to include certain advertising activities and also to include referrals as discussed in more detail above in the analysis of ''offers.'' Nevertheless, comment 36(a)–1, as adopted, does not state that ''arranges'' includes any task that is part of the process of originating a credit transaction because some loan origination activities under this final rule are included under elements other than ''arranges.''

Assists a consumer. TILA section 103(cc)(2)(A)(ii) provides that a mortgage originator includes a person who ''assists a consumer in obtaining or applying to obtain a residential mortgage loan.'' TILA section 103(cc)(4) provides that a person ''assists a consumer in obtaining or applying to obtain a residential mortgage loan'' by taking actions such as ''advising on residential mortgage loan terms (including rates, fees, and other costs), preparing residential mortgage loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.'' The Bureau proposed to clarify in comment 36(a)–1.i.A that the term ''loan originator'' includes a person who assists a consumer in obtaining or applying for consumer credit by: (1) Advising on specific credit terms (including rates, fees, and other costs); (2) filling out an application; (3) preparing application packages (such as a credit application or pre-approval application or supporting documentation); or (4) collecting application and supporting information on behalf of the consumer to submit to a loan originator or creditor. Each component of this statutory provision (*i.e.,* advising on residential mortgage loan terms, preparing residential mortgage loan packages, and collecting information on behalf of the consumer) is addressed below.

TILA section 103(cc)(4) provides that a person ''assists a consumer in obtaining or applying to obtain a residential mortgage loan'' by, among other things, ''advising on residential mortgage loan terms (including rates, fees, and other costs).'' The Bureau proposed to clarify in comment 36(a)–1.i.A that ''takes an application, arranges, offers, negotiates, or otherwise obtains an extension of consumer credit for another person'' includes ''assists a consumer in obtaining or applying for consumer credit by advising on credit terms (including rates, fees, and other costs).'' In the proposal, the Bureau also stated that the definition of ''mortgage originator'' in TILA generally does not include bona fide third-party advisors such as accountants, attorneys, registered financial advisors, certain housing counselors, or others who advise a consumer on credit terms offered by another person and do not receive compensation directly or indirectly from that person. The Bureau indicated that the definition of ''mortgage originator'' would apply to persons who advise consumers regarding the credit terms being advertised or offered by that person or by the loan originator or creditor to whom the person brokered or referred the transaction in expectation of compensation, rather than objectively advising consumers on transaction terms already offered by an unrelated party to the consumer (*i.e.,* in the latter scenario the advisor did not refer or broker the transaction to a mortgage broker or a creditor and is not receiving compensation from a loan originator or creditor originating the transaction or an affiliate of that loan originator or creditor). If the advisor receives payments or compensation from a loan originator, creditor, or an affiliate of the loan originator or creditor offering, arranging, or extending the consumer credit in connection with advising a consumer on credit terms, however, the advisor could be considered a loan originator.

The Bureau is defining ''loan originator'' in § 1026.36(a)(1)(i) to include persons who ''assist a consumer in obtaining or applying to obtain'' an extension of credit. The Bureau is providing additional clarification in revised comments 36(a)–1 and 36(a)–4 on the meaning of ''assists a consumer in obtaining or applying to obtain'' an extension of credit.

Several industry groups and housing counselor commenters requested additional clarification on the meaning of ''assists a consumer in obtaining or applying for consumer credit *by advising on credit terms* (including rates, fees, and other costs).'' The Bureau interprets the phrase, ''advising on credit terms (including rates, fees, and other costs)'' to include advising a consumer on whether to seek or accept specific credit terms from a creditor. However, the phrase does not include persons who merely provide general explanations or descriptions in response to consumer queries, such as by explaining general credit terminology or the interactions of various credit terms not specific to a transaction. The Bureau also is adopting additional clarifications in comment 36(a)–1.v to reflect its interpretation that ''advising on credit terms'' does not include the activities performed by bona fide third-party advisors such as accountants, attorneys, registered financial advisors, certain housing counselors, or others who advise consumers on particular credit terms but do not receive compensation or other monetary gain, directly or indirectly, from the loan originator or creditor offering or extending the particular credit terms.

The Bureau believes that payment from the loan originator or creditor offering or extending the credit usually evidences that the advisor is incentivized to depart from the advisor's core, objective consumer advisory activity to further the credit origination goals of the loan originator or creditor instead. Thus, this interpretation applies only to advisory activity that is part of the advisor's activities. Although not a requirement for the exclusion, the Bureau believes that advisers acting under authorization or the regulatory oversight of a governing body, such as licensed accountants advising clients on the implications of credit terms, registered financial advisors advising clients on potential effects of credit terms on client finances, HUD-approved housing counselors assisting applicants with understanding the origination process and various credit terms offered by a loan originator or a creditor, or a licensed attorney assisting clients to consummate the purchase of a home or with divorce, trust, or estate planning matters are generally already subject to substantial consumer protection requirements. Such third-party advisors would be loan originators, however, if they advise consumers on particular credit terms and receive compensation or other monetary gain, directly or indirectly, from the loan originator or creditor offering or extending the particular credit terms. Therefore, these persons may no longer be viewed as acting within the scope of their bona fide third-party activities, which typically do not involve any part of the loan origination process (*i.e.,* no longer acting solely as an accountant, financial advisor, housing counselor, or an attorney instead of a loan originator).

The Bureau understands that some nonprofit housing counselors or housing counselor organizations may receive fixed sums from creditors or loan originators as a result of agreements between creditors and local, State, or Federal agencies or where such compensation is expressly permitted by applicable local, State or Federal law that requires counseling. The Bureau believes that housing counselors acting pursuant to such permission or authority for a particular transaction should not be considered loan originators for that transaction. Thus, funding or compensation received by a housing counselor organization or person from a loan originator or a creditor or the affiliate of a loan originator or creditor that is not contingent on referrals or on engaging in loan origination activities other than assisting a consumer in obtaining or applying to obtain a residential mortgage transaction, where such compensation is expressly permitted by applicable local, State, or Federal law that requires counseling and the counseling performed complies with such law (for example, § 1026.34(a)(5) and § 1026.36(k)) or where the compensation is paid pursuant to an agreement between the creditor or loan originator (or either's affiliate) and a local, State, or Federal agency, would not cause these persons to be considered to be ''advising on credit terms'' within the meaning of the loan originator definition. The Bureau has added comment 36(a)–1.v to clarify further that such third-party advisors are not loan originators.

The Bureau has adopted further clarification in comment 36(a)–1.i.A.*3* to note that the phrase ''assists a consumer in obtaining or applying for consumer credit by advising on credit terms (including rates, fees, and other costs)'' applies to ''specific credit terms'' rather than ''credit terms'' generally. The Bureau has also clarified the exclusion for advising consumers on non-specific credit terms and the loan process generally from the definition of ''loan originator'' for persons performing management, administrative and clerical tasks in comment 36(a)–4 as discussed further below.

TILA section 103(cc)(4) provides that a person ''assists a consumer in obtaining or applying to obtain a residential mortgage loan'' by, among other things, ''preparing residential mortgage loan packages.'' The proposal would have clarified ''preparing residential mortgage loan packages'' in comment 36(a)–1.i.A.*3* by stating ''preparing application packages (such as credit or pre-approval application or supporting documentation).''

Many industry group, bank, and manufactured housing finance commenters stated that individuals primarily engaged in ''back-office'' processing such as persons supervised by a loan originator who compile and assemble application materials and supporting documentation to submit to the creditor should not be considered loan originators. A housing assistance group and a State housing finance agency indicated that HUD-approved housing counselors often assist consumers with collecting and organizing documents for submitting application materials to loan originators or creditors. These commenters further requested clarification regarding whether housing counselors engaged in these activities would be considered loan originators.

The Bureau agrees that persons generally engaged in loan processing or who compile and process application materials and supporting documentation and do not take an application, collect information on behalf of the consumer, or communicate or interact with consumers regarding specific transaction terms or products are not loan originators (see the separate discussion above on taking an application and collecting information on behalf of the consumer). Accordingly, while the Bureau is adopting the phrase ''preparing application packages (such as credit or pre-approval application or supporting documentation)'' as proposed, it also is providing additional interpretation in comment 36(a)–4 with respect to persons who engage in certain management, administrative, and clerical tasks and are not included in the definition of loan originator. The Bureau believes this commentary should clarify that persons providing general application instruction to consumers so consumers can complete an application or persons engaged in certain processing functions without interacting or communicating with the consumer regarding specific transaction terms or products (other than confirming terms that have already been transmitted to the consumer in a written offer) are not included in the definition of loan originator.

As discussed above regarding advising on residential mortgage loan terms and below in the discussion of collecting information on behalf of the consumer, the Bureau does not believe the definition of loan originator includes bona fide third-party advisors, including certain housing counselors that aid consumers in collecting and organizing documents, or others who do not receive compensation from a loan originator, a creditor, or the affiliates of a loan originator or a creditor in connection with a consumer credit transaction (or those who only receive compensation paid to housing counselors where counseling is required by applicable local, State, or Federal law and the housing counselors' activities are compliant with such law). This interpretation is included in comment 36(a)–1.v.

TILA section 103(cc)(4) provides that a person ''assists a consumer in obtaining or applying to obtain a residential mortgage loan'' by, among other things, ''collecting information *on behalf of the consumer* with regard to a residential mortgage loan.'' (Emphasis added.) The Bureau proposed to clarify in comment 36(a)–1.i.A that the definition of ''loan originator'' includes assisting a consumer in obtaining or applying for consumer credit by ''collecting information on behalf of the consumer to submit to a loan originator or creditor.''

Several industry associations, banks, and manufactured housing finance commenters sought clarification on whether ''collecting information on behalf of the consumer to submit to a loan originator or creditor'' includes persons engaged in clerical activities with respect to such information. A bank, a manufactured housing financer, and an industry group commenter argued that persons who contact the consumer to collect application and supporting information on behalf of a loan originator or creditor should not be subject to the rule. Many of these commenters also suggested that activities such as collecting information would qualify for the exclusion from the SAFE Act definition of loan originator for ''administrative or clerical tasks.''

As discussed above, the Bureau believes the Dodd-Frank Act definition of loan originator is broader in most ways than that in the SAFE Act. The Bureau also believes, however, that persons who, *acting on behalf of a loan originator or creditor,* verify information provided by the consumer in the credit application, such as by asking the consumer for documentation to support the information the consumer provided in the application, or for the consumer's authorization to obtain supporting documentation from third parties, are not collecting information *on behalf of the consumer.* Persons engaged in these activities are collecting information *on behalf of the loan originator or creditor.* Furthermore, this activity is administrative or clerical in nature as discussed further in the managers, administrative and clerical tasks analysis below. However, collecting information ''on behalf of the consumer'' would include gathering information or supporting documentation from third parties *on behalf of the consumer* to provide to the consumer, for the consumer then to provide in the application or for the consumer to submit to the loan originator or creditor, for compensation or in expectation of compensation from a loan originator, creditor, or an affiliate of the loan originator or creditor. Comment 36(a)–1.i.A.*3* clarifies this point.

The Bureau is finalizing comment 36(a)–1.i.A.*3* to clarify that the definition of ''loan originator'' includes assisting a consumer in obtaining or applying for consumer credit by ''collecting information on behalf of the consumer to submit to a loan originator or creditor.'' Thus, a person performing these activities is a loan originator. The Bureau is also providing additional interpretation in comment 36(a)–4 with respect to persons who engage only in certain management, administrative, and clerical tasks (*i.e.,* typically loan processors for the purposes of this discussion) and are therefore not included in the definition of loan originator.

TILA section 103(cc)(2)(B) provides that a mortgage originator ''includes any person who represents to the public, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such person can or will provide any of the services or perform any of the activities described in subparagraph (A).'' The Bureau proposed to revise comment 36(a)–1.i.A to clarify that a loan originator ''includes a person who in expectation of compensation or other monetary gain advertises or communicates to the public that such person can or will provide any of these (loan origination) services or activities.''

The Bureau stated in the section-by-section analysis of proposed § 1026.36(a) that the Bureau believes the existing definition of ''loan originator'' in § 1026.36(a) includes persons who, in expectation of compensation or other monetary gain, communicate or advertise loan origination activities or services to the public. The Bureau noted in the analysis that the phrase ''advertises or communicates to the public'' is very broad and includes, but is not limited to, the use of business cards, stationery, brochures, signs, rate lists, or other promotional items listed in TILA section 103(cc)(2)(B), if these items advertise or communicate to the public that a person can or will provide loan origination services or activities. The Bureau also stated in the analysis that the Bureau believed this clarification furthers TILA's goal in section 129B(a)(2) of ensuring that responsible, affordable credit remains available to consumers.

A commenter questioned whether paid advertisers would be considered loan originators under the proposal. The Bureau believes a person performs the activity described in the ''advertises or communicates'' provision only if the person, or an employee or affiliate of the person, advertises that *that* person can or will provide loan origination services or activities. Thus, a person simply publishing or broadcasting an advertisement that indicates that a third party can or will perform loan origination services is not a loan originator. The Bureau notes that the more an advertisement is specifically directed at and communicated to a particular consumer or small number of consumers only, the more the advertisement could constitute a referral and not an advertisement (see the definition of referral in comment 36(a)–1.i.A.*1*). The Bureau is finalizing comment 36(a)–1.i.A.*5* to accommodate changes to surrounding proposed text as follows: ''The scope of activities covered by the term loan originator includes: * * * advertising or communicating to the public that one can or will perform any loan origination services. Advertising the services of a third party who engages or intends to engage in loan origination activities does not make the advertiser a loan originator.''

TILA section 103(cc)(2)(B) does not contain an express requirement that a person must advertise for or in expectation of compensation or gain to be considered a ''mortgage originator.'' To the extent there is any uncertainty, the Bureau relies on its exception authority under TILA section 105(a) to clarify that such a person must advertise for or in expectation of compensation or gain in return for the services advertised to be a ''loan originator.'' Under TILA section 103(cc)(2)(A), persons that engage in one or more of the core ''mortgage originator'' activities of the statute and that do not receive or expect to receive compensation or gain are not ''mortgage originators.'' The Bureau believes that also applying the compensation requirement to persons who advertise that they can or will perform ''mortgage originator'' activities maintains consistency throughout the definition of ''mortgage originator.'' This result effectuates the purposes of TILA in ensuring that responsible, affordable mortgage credit remains available to consumers and facilitates compliance by reducing uncertainty.

Negotiates or otherwise obtains or makes. TILA section 103(cc)(2) defines ''mortgage originator'' to include a person who ''negotiates'' terms of a residential mortgage loan. Existing § 1026.36(a)(1) contains ''negotiates'' and ''otherwise obtains'' in the definition of ''loan originator,'' and the Bureau proposed to retain the terms in the definition. The Bureau did not define ''negotiates'' or ''otherwise obtains'' in the proposal except to state that ''arranges, negotiates, or otherwise obtains'' in the existing definition of ''loan originator'' already includes the core elements of the term ''mortgage originator'' in TILA section 103(cc)(2)(A).

The Bureau did not receive any comments specific to the definition of ''negotiates'' or ''otherwise obtains.'' Consistent with the definition of ''negotiates'' in Regulation H and to facilitate compliance, in comment 36(a)–1.i.A.*4,* the Bureau interprets ''negotiates'' as encompassing the following activities: (1) Presenting for consideration by a consumer particular credit terms; or (2) communicating with a consumer for the purpose of reaching a mutual understanding about prospective credit terms. The Bureau also is including in the definition of a loan originator the additional phrase ''or makes'' to ensure that creditors that extend credit without the use of table funding, including those that do none of the other activities described in the definition in § 1026.36(a)(1)(i) but solely provide the funds to consummate transactions, are loan originators for purposes of § 1026.36(f) and (g). As discussed in more detail below, those requirements are applicable to all creditors engaged in loan origination activities, unlike the other provisions of § 1026.36.

Manufactured Home Retailers

The definition of ''mortgage originator'' in TILA section 103(cc)(2)(C)(ii) expressly excludes certain employees of manufactured home retailers if they assist a consumer in obtaining or applying to obtain a residential mortgage loan by preparing residential mortgage loan packages or collecting information on behalf of the consumer with regard to a residential mortgage loan but do not take a residential mortgage loan application, do not offer or negotiate terms of a residential mortgage application, and do not advise a consumer on loan terms (including rates, fees, and other costs). The definition of ''loan originator'' in existing § 1026.36(a)(1) does not address such employees. The Bureau proposed to implement the new statutory exclusion by revising the definition of ''loan originator'' in § 1026.36(a)(1) to exclude employees of a manufactured home retailer who assist a consumer in obtaining or applying to obtain consumer credit, provided such employees do not take a consumer credit application, offer or negotiate terms of a consumer credit transaction, or advise a consumer on credit terms (including rates, fees, and other costs).

Many manufactured housing finance commenters sought clarification on whether retailers and their employees would be considered loan originators. The commenters stated that some employees perform both sales activities and loan origination activities, but receive compensation characterized as a commission for the sales activities only. The Bureau notes that, under the statute and proposed rule, a person who for direct or indirect compensation engages in loan origination activities is a loan originator and that all forms of compensation count for this purpose, even if they are not structured as a commission or other transaction-specific form of compensation (*i.e.,* compensation includes salaries, commissions, bonus, or any financial or similar incentive regardless of the label or name of the compensation as stated in existing comment 36(d)(1)–1, which this rulemaking recodifies as comment 36(a)–5). Thus, if a manufactured housing retailer employee receives compensation ''in connection with'' the employee's loan origination activities, the employee is a loan originator, regardless of the stated purpose or name of the compensation. To clarify this point further, the Bureau has revised § 1026.36(a)(1)(i) and comment 36(a)–1.i.A to provide that, if a person receives direct or indirect compensation for taking an application, assisting a consumer in obtaining or applying to obtain, arranging, offering, negotiating, or otherwise obtaining or making an extension of consumer credit for another person, the person is a loan originator.

A large number of manufactured housing industry commenters stated that the Bureau should further clarify what activities would be considered ''assisting the consumer in obtaining or applying to obtain'' credit, ''taking an application,'' ''offering or negotiating terms,'' or ''advising'' on credit terms. The Bureau has included several clarifications of these elements of the definition of ''loan originator'' in this final rule in § 1026.36(a)(1)(i) and comments 36(a)–1.i.A and 36(a)–4, as discussed above.

One manufactured housing finance commenter stated that, under the proposed exclusion for employees of a manufactured home retailer, employees could be compensated, in effect, for referring a consumer to a creditor without becoming a loan originator. The Bureau disagrees. The proposed exclusion was for ''employees of a manufactured home retailer who assist a consumer in obtaining or applying to obtain consumer credit, provided such employees do not take a consumer credit application, offer or negotiate terms of a consumer credit transaction, or advise a consumer on credit terms (including rates, fees, and other costs).'' As discussed above and clarified in comment 36(a)–1.i.A, the definition of ''loan originator'' includes referrals of a consumer to another person who participates in the process of originating a credit transaction because referrals constitute a form of ''offering * * * credit terms.'' The one core activity that the exclusion permits manufactured housing retail employees to perform without becoming loan originators, ''[a]ssisting a consumer in obtaining or applying to obtain'' credit, has a statutorily defined meaning that does not include referring consumers to a creditor. Thus, employees of manufactured home retailers who refer consumers to particular credit providers would be considered loan originators if they are compensated for such activity.

Many manufactured housing financer commenters stated they were concerned that all compensation paid to a manufactured home retailer and its employees could be considered loan originator compensation and therefore counted as ''points and fees'' in the Board's 2011 ATR Proposal and the Bureau's 2012 HOEPA Proposal. As noted above, in the 2013 ATR Concurrent Proposal, the Bureau is seeking public comment on whether additional clarification is necessary for determining when compensation paid to such loan originators must be included in points and fees.

Creditors

Section 1401 of the Dodd-Frank Act amended TILA to add section 103(cc)(2)(F), which provides that the definition of ''mortgage originator'' expressly excludes creditors (other than creditors in table-funded transactions) for purposes of TILA section 129B(c)(1), (2), and (4), which include restrictions on compensation paid to loan originators and are implemented in § 1026.36(d). As noted, however, the TILA section 103(cc)(2)(F) exclusion from these compensation provisions for creditors does not apply to a table-funded creditor. Accordingly, a table-funded creditor that meets the definition of a loan originator in a transaction is subject to the compensation restrictions. The proposal noted this limited exclusion from the compensation provisions and also noted that TILA section 129B(b), added by section 1402 of the Dodd-Frank Act, imposes new qualification and loan document unique identifier requirements that apply to all creditors that otherwise meet the definition of a loan originator whether or not they make use of table-funding. These new requirements are implemented in § 1026.36(f) and (g), respectively.

Existing § 1026.36(a) includes a creditor extending table-funded credit transactions in the definition of a loan originator. That is, a creditor who originates the transaction but does not finance the transaction at consummation out of the creditor's own resources, including, for example, by drawing on a bona fide warehouse line of credit or out of deposits held by that creditor, is a loan originator. The Bureau proposed to amend the definition of loan originator in § 1026.36(a)(1)(i) to include all creditors, whether or not they engage in table-funded transactions, for purposes of § 1026.36(f) and (g) only. The Bureau also proposed to make technical amendments to comment 36(a)-1.ii on table funding to reflect the applicability of TILA section 129B(b)'s new requirements to such creditors.

The Bureau received comments from a manufactured housing industry group and a manufactured housing financer seeking clarification regarding whether manufactured home retailers are table-funded creditors, general TILA creditors, or neither. These commenters stated that the Bureau should specifically clarify that manufactured home retailers are not table-funded creditors. These commenters noted that manufactured home purchases are often financed using retail installment sales contracts. The commenters further explained that the credit-sale form of financing is the creditor's choice and not the retailer's.

Under the existing rule, manufactured housing retailers that assign the retail installment sales contract at consummation to another person that provides the funding directly are already considered tabled-funded creditors included in the definition of loan originator for such transactions. These table-funded creditors are subject to the restrictions on compensation paid to loan originators if the table-funded creditor otherwise meets the definition of a loan originator. The Dodd-Frank Act did not provide a definition or treatment of table-funded creditors that differs from the existing rule, and the Bureau believes it would be inconsistent to exempt manufactured housing retailers that act as table-funded creditors from the restrictions on compensation that apply to all table-funded creditors that also meet the definition of a loan originator.

To accommodate the applicability of the new qualification and unique identifier requirements to creditors, the Bureau is defining ''loan originator'' in § 1026.36(a)(1)(i) and associated comment 36(a)–1.i.A.*2* to clarify that the term includes persons who ''make'' an extension of credit. The Bureau is also revising § 1026.36(a)(1)(i) to clarify further that all creditors engaging in loan origination activities are loan originators for purposes of § 1026.36(f) and (g). The Bureau is adopting the proposed clarification on the applicability of the loan originator compensation rules to creditors in table-funded transactions and the technical revisions as proposed.

Servicers

TILA section 103(cc)(2)(G) defines ''mortgage originator'' to exclude a servicer or its employees, agents, or contractors, ''including but not limited to those who offer or negotiate terms of a residential mortgage loan for purposes of renegotiating, modifying, replacing or subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind.'' The term ''servicer'' is defined by TILA section 103(cc)(7) as having the same meaning as ''servicer'' ''in section 6(i)(2) of the Real Estate Settlement Procedures Act of 1974 [RESPA] (12 U.S.C. 2605(i)(2)).''

This provision in RESPA defines the term ''servicer'' as ''the person responsible for servicing of a loan (including the person who makes or holds a loan if such person also services the loan).'' [65] The term ''servicing'' is defined to mean ''receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan, including amounts for escrow accounts described in section 2609 of [title 12], and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan.'' 12 U.S.C. 2605(i)(3).

Existing comment 36(a)–1.iii provides that the definition of ''loan originator'' does not apply to a servicer when modifying existing credit on behalf of the current owner. The loan originator definition only includes persons involved in extending consumer credit. Thus, modifications of existing credit, which are not refinancings that involve extinguishing existing obligations and replacing them with a new credit extension as described under § 1026.20(a), are not subject to the rule. The Bureau's proposal would have amended comment 36(a)–1.iii to clarify and reaffirm this distinction in implementing the Dodd-Frank Act's definition of mortgage originator.

As stated in the supplementary information of the proposal, the Bureau believes the exception in TILA section 103(cc)(2)(G) applies to servicers and servicer employees, agents, and contractors only when engaging in specified servicing activities with respect to a particular transaction after consummation, including loan modifications that do not constitute refinancings. The Bureau stated that it does not believe that the statutory exclusion was intended to shield from coverage companies that intend to act as servicers on transactions that they originate when they engage in loan origination activities prior to consummation of such transactions or to apply to servicers of existing mortgage debts that engage in the refinancing of such debts. The Bureau believes that exempting such companies merely because of the general status of ''servicer'' with respect to some credit would be inconsistent with the general purposes of the statute and create a large potential loophole.

The Bureau's rationale for the proposed amendment to the comment rested on analyzing the two distinct parts of the statute. Under TILA section 103(cc)(2)(G), the definition of ''mortgage originator'' does not include: (1) ''A servicer'' or (2) ''servicer employees, agents and contractors, including but not limited to those who offer or negotiate terms of a residential mortgage loan for purposes of renegotiating, modifying, replacing and subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind.'' Considering the text of this provision in combination with the definition of ''servicer'' under RESPA in 12 U.S.C. 2605(i)(2), a servicer that is responsible for servicing a mortgage debt or that extends mortgage credit *and* services it is excluded from the definition of ''mortgage originator'' for that particular transaction after it is consummated and the servicer becomes responsible for servicing it. ''Servicing'' is defined under RESPA as ''receiving and making payments according to the terms of the loan.'' Thus, a servicer cannot be responsible for servicing a transaction that does not yet exist. An extension of credit that may be serviced exists only after consummation. Therefore, for purposes of TILA section 103(cc)(2)(G), a person is a servicer with respect to a particular transaction only after it is consummated and that person retains or obtains its servicing rights.

In the section-by-section analysis of the proposal, the Bureau further stated this interpretation of the statute is the most consistent with the definition of ''mortgage originator'' in TILA section 103(cc)(2). A person cannot be a servicer of a credit extension until after consummation of the transaction. A person taking an application, assisting a consumer in obtaining or applying to obtain a mortgage transaction, offering or negotiating terms of a transaction, or funding the transaction prior to or at consummation is a mortgage originator or creditor (depending upon the person's role). Thus, a person that funds a transaction from the person's own resources or a creditor engaged in a table-funded transaction is subject to the appropriate provisions in TILA section 103(cc)(2)(F) for creditors until the person becomes responsible for servicing the resulting debt obligation after consummation. The Bureau explained that this interpretation is also consistent with the definition of ''loan originator'' in existing § 1026.36(a) and comment 36(a)–1.iii. If a loan modification by the servicer constitutes a refinancing under § 1026.20(a), the servicer is considered a loan originator or creditor until after consummation of the refinancing when responsibility for servicing the refinanced debt arises.

The proposal's supplementary information stated the Bureau's belief that the second part of the statutory servicer provision applies to individuals (*i.e.,* natural persons) who are employees, agents, or contractors of the servicer ''who offer or negotiate terms of a residential mortgage loan for purposes of renegotiating, modifying, replacing and subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind.'' The Bureau further noted that, to be considered employees, agents, or contractors of the servicer for the purposes of TILA section 103(cc)(2)(G), the person for whom the employees, agent, or contractors are working first must be a servicer. Thus, as discussed above, the particular transaction must have already been consummated before such employees, agents, or contractors can be excluded from the statutory term, ''mortgage originator'' under TILA section 103(cc)(2)(G).

In the supplementary information of the proposal, the Bureau interpreted the phrase ''offer or negotiate terms of a residential mortgage loan for purposes of renegotiating, modifying, replacing and subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind'' to be examples of the types of activities the individuals are permitted to engage in that satisfy the purposes of TILA section 103(cc)(2)(G). The Bureau explained, however, that ''renegotiating, modifying, replacing and subordinating principal of existing mortgages'' or any other related activities does not extend to refinancings, such that persons that engage in a refinancing, as defined in § 1026.20(a), do qualify as loan originators for the purposes of TILA section 103(cc)(2)(G). Under the Bureau's view as stated in the proposal, a servicer may modify an existing debt obligation in several ways without being considered a loan originator. A formal satisfaction of the existing obligation and replacement by a new obligation, however, is a refinancing that involves a new extension of credit.

The Bureau further interpreted the term ''replacing'' in TILA section 103(cc)(2)(G) not to include refinancings of consumer credit. The term ''replacing'' is not defined in TILA or

[65] RESPA defines ''servicer'' to exclude: (A) the FDIC in connection with changes in rights to assets pursuant to section 1823(c) of title 12 or as receiver or conservator of an insured depository institution; and (B) Ginnie Mae, Fannie Mae, Freddie Mac, or the FDIC, in any case in which changes in the servicing of the mortgage loan is preceded by (i) termination of the servicing contract for cause; (ii) commencement of bankruptcy proceedings of the servicer; or (iii) commencement of proceedings by the FDIC for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled). 12 U.S.C. 2605(i)(2).

Regulation Z, but the Bureau indicated its belief in the proposal that the term ''replacing'' in this context means replacing existing debt without also satisfying the original obligation. For example, two separate debt obligations secured by a first- and second-lien, respectively, may be ''replaced'' by a single, new transaction with a reduced interest rate and principal amount, the proceeds of which do not satisfy the full obligation of the prior debts. In such a situation, the agreement for the new transaction may stipulate that the consumer remains responsible for the outstanding balances that have not been refinanced, if the consumer refinances or defaults on the new transaction within a stated period of time. This is conceptually distinct from a refinancing as described in § 1026.20(a), which refers to situations where an existing ''obligation *is satisfied and replaced* by a new obligation.'' [66] (Emphasis added.)

The Bureau reasoned in the supplementary information of the proposal that the ability to repay provisions of TILA section 129C, which were added by section 1411 of the Dodd-Frank Act, make numerous references to certain ''refinancings'' for exemptions from the income verification requirement of section 129C. TILA section 128A, as added by section 1418 of the Dodd-Frank Act, contains a required disclosure that includes a ''refinancing'' as an alternative for consumers of hybrid adjustable rate mortgages to pursue before the interest rate adjustment or reset after the fixed introductory period ends. Moreover, prior to the Dodd-Frank Act amendments, TILA contained the term ''refinancing'' in numerous provisions. For example, TILA section 106(f)(2)(B) provides finance charge tolerance requirements specific to a ''refinancing,'' TILA section 125(e)(2) exempts certain ''refinancings'' from right of rescission disclosure requirements, and TILA section 128(a)(11) requires disclosure of whether the consumer is entitled to a rebate upon ''refinancing'' an obligation in full that involves a precomputed finance charge. The Bureau stated for these reasons its belief that, if Congress intended ''replacing'' to include or mean a ''refinancing'' of consumer credit, Congress would have used the existing term, ''refinancing.'' Instead, without any additional guidance from Congress, for the purposes of proposed comment 36(a)–1.iii, the Bureau deferred to the existing definition of ''refinancing'' in § 1026.20(a), where the definition of ''refinancing'' requires both replacement *and* satisfaction of the original obligation as separate and distinct elements of the defined term.

Furthermore, as the Bureau explained in the proposal's supplementary information, the above interpretation of ''replacing'' better accords with the surrounding statutory text in TILA section 103(cc)(2)(G), which provides that servicers include persons offering or negotiating a residential mortgage loan for the purposes of ''renegotiating, modifying, replacing or subordinating principal of existing mortgages where borrowers are behind in their payments, in default or have a reasonable likelihood of being in default or falling behind.'' Taken as a whole, this text applies to distressed consumers for whom replacing and fully satisfying the existing obligation(s) likely is not an option. The situation covered by the text is distinct from a refinancing in which a consumer would simply use the proceeds from the refinancing to satisfy an existing loan or existing loans.

The Bureau stated in the proposal's supplementary information that this interpretation gives full effect to the exclusionary language as Congress intended, to avoid undesirable impacts on servicers' willingness to modify existing loans to benefit distressed consumers, without undermining the new protections generally afforded by TILA section 129B. The Bureau further stated that a broader interpretation that excludes servicers and their employees, agents, and contractors from those protections solely by virtue of their coincidental status as servicers would not be the best reading of the statute as a whole and likely would frustrate rather than further congressional intent.

Indeed, as the Bureau also noted in the supplementary information of the proposal, if persons were not included in the definition of mortgage originator when making but prior to servicing a transaction or based purely on a person's status as a servicer under the definition of ''servicer,'' at least two-thirds of mortgage creditors (and their originator employees) nationwide could be excluded from the definition of ''mortgage originator'' in TILA section 103(cc)(2)(G). Many, if not all, of the top ten mortgage creditors by volume either hold or service loans they originated in portfolio or retain servicing rights for the loans they originate and sell into the secondary market.[67] Under an interpretation that would categorically exclude a person who makes and also services a transaction or whose general ''status'' is a ''servicer,'' these creditors would be excluded as ''servicers'' from the definition of ''mortgage originator.'' Further, their employees, agents, and contractors would also be excluded from the definition under this interpretation.

The Bureau explained in the proposal's supplementary information that this result would be not only contrary to the statutory text but also contrary to Congress's stated intent in section 1402 of the Dodd-Frank Act, to ensure that responsible, affordable mortgage credit remains available to consumers by regulating practices related to residential mortgage loan origination. For example, based on the discussion above the top ten mortgage creditors by origination and servicing volume alone, as much as approximately 61 percent of the nation's loan originators, could not only be excluded from prohibitions on dual compensation and compensation based on transaction terms but also from the new qualification requirements added by the Dodd-Frank Act.

The Bureau's proposed rule would have amended comment 36(a)–1.iii, to reflect the Bureau's interpretation of the statutory text as stated in the supplementary information of the proposal and again above, to facilitate compliance, and to prevent circumvention. In the supplementary information, the Bureau also interpreted the statement in existing comment 36(a)-1.iii that the ''definition of 'loan originator' does not apply to a loan servicer when the servicer modifies an existing loan on behalf of the current owner of the loan'' as consistent with the definition of mortgage originator as it relates to servicers in TILA section 103(cc)(2)(G). Proposed comment 36(a)-1.iii would have clarified that the definition of ''loan originator'' excludes a servicer or a servicer's employees, agents, and contractors when offering or negotiating terms of a particular existing debt obligation on behalf of the current owner for purposes of renegotiating,

[66] Comment 20(a)–1 clarifies: ''The refinancing may involve the consolidation of several existing obligations, disbursement of new money to the consumer or on the consumer's behalf, or the rescheduling of payments under an existing obligation. In any form, the new obligation *must completely replace* the prior one.'' (Emphasis added).

[67] For example, the top ten U.S. creditors by mortgage origination volume in 2011 held 72.7 percent of the market share. 1 Inside Mortg. Fin., *The 2012 Mortgage Market Statistical Annual* 52–53 (2012) (these percentages are based on dollar amounts). These same ten creditors held 60.8 percent of the market share for mortgage servicing. 1 Inside Mortg. Fin., *The 2012 Mortgage Market Statistical Annual* 185–186 (2012) (these percentages are based on dollar amounts). Most of the largest creditors do not ordinarily sell their originations into the secondary market with servicing released.

modifying, replacing, or subordinating principal of such a debt where the consumer is not current, is in default, or has a reasonable likelihood of becoming in default or not current. The Bureau also proposed to amend comment 36(a)-1.iii to clarify that § 1026.36 ''only applies to extensions of consumer credit that constitute a refinancing under § 1026.20(a). Thus, the rule does not apply if a renegotiation, modification, replacement, or subordination of an existing obligation's terms occurs, unless it is a refinancing under § 1026.20(a).''

Several industry groups and creditors supported the Bureau's approach to not including servicers in the definition of loan originator. Industry groups and several large banks stated that the final rule should make clear that the definition of loan originator does not include individuals facilitating loan modifications, short sales, or assumptions. An industry group commenter indicated that the final rule should clarify that persons who ''offer'' to modify an existing obligation should also not be included in the definition of loan originator. Other large banks and industry groups stated that the final rule should clarify that servicers include persons who permit a new consumer to assume an existing obligation. Furthermore, they argued, the exclusion for servicers should apply to companies that, for example, pay off a lien on the security property and allow the consumer to repay the amount required over time. A large secondary market commenter also stated that comment 36(a)–1.iii should be further clarified to include circumstances where the servicer is modifying a mortgage obligation on behalf of an assignee.

The Bureau is adopting § 1026.36(a)(1)(i)(E) to implement TILA section 103(cc)(2)(G) consistent with the analysis above, as well as comment 36(a)–1.iii as proposed with a few minor clarifications to address issues raised by several of the commenters. The final rule amends comment 36(a)–1.iii to clarify that the exclusion from the definition of loan originator for a ''servicer'' also excludes the servicer's employees, agents, and contractors. The final rule also revises the comment to exclude persons who ''offer'' to modify existing obligations from the definition of loan originator. The Bureau is also clarifying comment 36(a)–1.iii to exclude servicers that modify the obligations on behalf of an assignee or that modify obligations the servicer itself holds.

The Bureau continues to believe, as noted in the supplementary information of the proposal, that a formal satisfaction of the consumer's existing obligation *and* replacement by a new obligation is a refinancing and not a modification. But, short of refinancing, a servicer may modify a mortgage obligation without being considered a loan originator. In both a short sale and an assumption, there is no new obligation for the consumer currently obligated to repay the debt. The existing obligation is effectively terminated from that consumer's perspective.

In a short sale the security property is sold and the existing obligation is extinguished. Thus, the Bureau believes that a short sale constitutes a modification of the existing obligation assuming it is not being replaced by a new obligation on the seller. If the property buyer in the short sale receives financing from the person who was servicing the seller's obligation, this financing is a new extension of credit that is subject to § 1026.36.

In an assumption, however, a different consumer agrees to take on the existing obligation. From this consumer's perspective the existing obligation is a new extension of credit. The Bureau believes such consumers should be no less protected than the original consumer who first became obligated on the transaction. Therefore, assumptions are subject to § 1026.36. The Bureau is clarifying comment 36(a)–1.iii to provide that persons that agree with a different consumer to accept the existing debt obligation are not servicers.

Regarding the comment that servicers should include persons that pay off a lien on the security property and allow the consumer to repay the amount required over time, the Bureau generally does not interpret the ''servicer'' exclusion from the definition of loan originator to apply to such persons. The Bureau believes that, although paying off the lien and permitting the consumer to repay it over time is related to the existing obligation, such a transaction creates a new debt obligation of the consumer to repay the outstanding balance and is not a modification of the existing obligation. But whether such a person is a servicer also depends on the terms of the note and security instrument for the existing obligation. In some instances, under the terms of the existing agreement, an advance made by the debt holder to protect or maintain the holder's security interest may become part of the existing debt obligation in which case such an advance could effectively operate to modify the existing obligation by adding to the existing debt but not to create a new debt obligation. The Bureau would consider persons making advances under these circumstances, in accordance with the existing agreement to be servicers.

Real Estate Brokers

TILA section 103(cc)(2)(D) states that the definition of ''mortgage originator'' does not ''include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless such person or entity is compensated by a lender, a mortgage broker, or other mortgage originator or by any agent of such lender, mortgage broker, or other mortgage originator.'' As the Bureau stated in the proposal, a real estate broker that performs loan origination activities or services as described in § 1026.36(a) is a loan originator for the purposes of § 1026.36.[68] The Bureau proposed to add comment 36(a)–1.iv to clarify that the term loan originator does not include real estate brokers that meet the statutory exclusion in TILA section 103(cc)(2)(D).

The Bureau stated in the proposal that the text of TILA section 103(cc)(2)(D) related to payments to a real estate broker ''by a lender, a mortgage broker, or other mortgage originator or by any agent of such lender, mortgage broker, or other mortgage originator'' is directed at payments by such persons in connection with the origination of a particular consumer credit transaction secured by a dwelling to finance the acquisition or sale of that dwelling (*e.g.,* to purchase the dwelling or to finance repairs to the property prior to selling it). If real estate brokers are deemed mortgage originators simply by receiving compensation from a creditor, then a real estate broker would be considered a mortgage originator if the real estate broker received compensation from a creditor for reasons wholly unrelated to loan origination (*e.g.,* if the real estate broker found new office space for the creditor).

The Bureau also stated in the proposal that it does not believe that either the definition of ''mortgage originator'' in TILA section 103(cc)(2) or the statutory purpose of TILA section 129B(a)(2) to ''assure consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deception or abusive,'' demonstrate that Congress intended the provisions of

[68] The Bureau understands that a real estate broker license in some States also permits the licensee to broker mortgage loans and in certain cases make mortgage loans. The Bureau does not consider brokering mortgage loans and making mortgage loans to be real estate brokerage activities.

TILA section 129B applicable to mortgage originators to cover real estate brokerage activity that is wholly unrelated to a particular real estate transaction involving a residential mortgage loan. The Bureau concluded that, for a real estate broker to be included in the definition of ''mortgage originator,'' the real estate broker must receive compensation in connection with performing one or more of the three core ''mortgage originator'' activities for a particular consumer credit transaction secured by a dwelling such as referring a consumer to a mortgage originator or creditor as discussed above (*i.e.,* a referral is a component of ''offering'' a residential mortgage loan).

The Bureau included the following example in the supplementary information: Assume XYZ Bank pays a real estate broker for a broker price opinion in connection with a pending modification or default of a mortgage obligation for consumer A. In an unrelated transaction, consumer B compensates the same real estate broker for assisting consumer B with finding and negotiating the purchase of a home. Consumer B also obtains credit from XYZ Bank to purchase the home. The Bureau stated its belief that this real estate broker is not a loan originator under these facts. Proposed comment 36(a)–1.iv would have clarified this point. The proposed comment would also clarify that a payment is not from a creditor, a mortgage broker, other mortgage originator, or an agent of such persons if the payment is made on behalf of the consumer to pay the real estate broker for real estate brokerage activities performed for the consumer.

The Bureau further noted in the proposal's supplementary information that the definition of ''mortgage originator'' in TILA section 103(cc)(2)(D) does not include a person or entity that *only performs real estate brokerage activities* and is licensed or registered in accordance with applicable State law. The Bureau stated its belief that, if applicable State law defines real estate brokerage activities to include activities that fall within the definition of loan originator in § 1026.36(a), the real estate broker is a loan originator when engaged in such activities subject to § 1026.36 and is not a real estate broker under TILA section 103(cc)(2)(D). In this situation, even though State law defines real estate brokerage activities to include loan origination activities, TILA section 103(cc)(2)(d) excludes only persons who perform real estate brokerage activities. A person performing loan origination activities does not become a person performing real estate brokerage activities for the purposes of TILA section 103(cc)(2)(d) because State law declares such loan origination activities to be real estate brokerage activities. The Bureau invited comment on this proposed clarification of the meaning of ''loan originator'' for real estate brokers.

The Bureau received one comment from a real estate broker trade association generally agreeing with the Bureau's interpretation of the real estate broker exclusion from the definition of loan originator. The association also commented, however, that the Bureau should clarify that where a brokerage earns a real estate commission for selling a foreclosed property owned by a creditor such compensation does not turn real estate brokerage into loan originator activity.

The Bureau is adopting § 1026.36(a)(1)(i)(C) to implement TILA section 103(cc)(2)(D) in accordance with the foregoing principles, as well as comment 36(a)–1.iv as proposed with additional clarification regarding payments from the proceeds of a credit transaction to a real estate agent on behalf of the creditor or seller and with respect to sales of properties owned by a loan originator, creditor, or an affiliate of a loan originator or creditor. The Bureau agrees that where a real estate broker earns a real estate commission only for selling a foreclosed property owned by a creditor such compensation does not turn real estate brokerage into a loan originator activity. But if, for example, a real estate agent was paid compensation by the real estate broker, an affiliate of the creditor (*e.g.,* the affiliate is a real estate brokerage that pays its real estate agents), for taking the consumer's credit application and performing other functions related to loan origination, the real estate agent would be considered a loan originator when engaging in such activity as set forth in § 1026.36(a)(1) and comment 36(a)–1.i.A. Accordingly, different parts of the commentary may apply depending on the circumstances.

Seller Financers

As noted above, TILA section 103(cc)(2)(F) and § 1026.36(a)(1) generally exclude creditors (other than table-funded creditors) from the definition of ''loan originator'' for most purposes under § 1026.36. Under existing Regulation Z, a person that sells property and permits the buyer to pay for the home in more than four installments, subject to a finance charge, generally is a creditor under § 1026.2(a)(17)(i). However, § 1026.2(a)(17)(v) provides that the definition of creditor: (1) Does not include a person that extended credit secured by a dwelling (other than high-cost mortgages) five or fewer times in the preceding calendar year; and (2) does not include a person who extends no more than one high-cost mortgage (subject to § 1026.32) in any 12-month period. Accordingly, absent special provision, certain ''seller financers'' that conduct a relatively small number of transactions per year are not ''creditors'' under Regulation Z and therefore could be subject to the loan originator compensation and other restrictions provided in § 1026.36 when engaging in loan origination activities.

The Dodd-Frank Act specifically addressed this issue in section 1401, which amended TILA section 103(cc)(2)(E) to provide that the term ''mortgage originator'' does not include a person, estate, or trust that provides mortgage financing in connection with the sale of up to three properties in any twelve-month period, each of which is owned by the person, estate, or trust and serves as security for the financing, but only if the financing meets a set of detailed prescriptions. Specifically, such seller-financed credit must:

(i) Not [be] made by a person, estate, or trust that has constructed, or acted as a contractor for the construction of, a residence on the property in the ordinary course of business of such person, estate, or trust; (ii) [be] fully amortizing; (iii) [be] with respect to a sale for which the seller determines in good faith and documents that the buyer has a reasonable ability to repay the loan; (iv) [have] a fixed rate or an adjustable rate that is adjustable after 5 or more years, subject to reasonable annual and lifetime limitations on interest rate increases; and (v) meet any other criteria the Bureau may prescribe.

The Bureau proposed comment 36(a)–1.v to implement these criteria. The proposed comment provided that the definition of ''loan originator'' does not include a natural person, estate, or trust that finances in any 12-month period the sale of three or fewer properties owned by such natural person, estate, or trust where each property serves as security for the credit transaction. It further stated that the natural person, estate, or trust also must not have constructed or acted as a contractor for the construction of the dwelling in its ordinary course of business. The proposed comment also stated that the natural person, estate, or trust must determine in good faith and document that the buyer has a reasonable ability to repay the credit transaction. Finally, the proposed comment stated that the credit transaction must be fully amortizing, have a fixed rate or an adjustable rate that adjusts only after five or more years, and be subject to reasonable annual and lifetime limitations on interest rate increases.

The Bureau also proposed to include further interpretation in the comment as to how a person may satisfy the criterion to determine in good faith that the buyer has a reasonable ability to repay the credit transaction. The comment would have provided that the natural person, estate, or trust makes such a good faith determination by complying with separate regulations to implement a general requirement under section 1411 of the Dodd-Frank Act for all creditors to make a reasonable and good faith determination of consumers' ability to repay before extending them closed-end mortgage credit. Those regulations, which were proposed by the Board in its 2011 ATR Proposal and which the Bureau intended to finalize in § 1026.43, contain detailed requirements concerning the verification of income, debts, and other information; payment calculation rules; and other underwriting practices. The Bureau noted that the language of the general obligation on creditors to consider consumers' ability to repay in TILA section 129C(a)(1), largely parallels the ability to repay criterion in the seller financer language of TILA section 103(cc)(2)(E), except that the general requirement mandates that the evaluation be made on ''verified and documented'' information.

While the Bureau proposed to implement the statutory exclusion, however, the Bureau also posited an interpretation in the preamble to the proposal that would have excluded many seller financers from the definition of ''loan originator'' without having to satisfy the statutory criteria. Specifically, the interpretation would have treated persons who extend credit as defined under Regulation Z from their own resources (*i.e.,* are not engaged in table-funded transactions in which they assign the seller financing agreement at consummation) as creditors for purposes of the loan originator compensation rules even if they were excluded from the first branch of the Regulation Z definition of ''creditor'' under Regulation Z's de minimis thresholds (*i.e.,* no more than five mortgages generally). 77 FR at 55288. Under this interpretation, such persons would not have been subject to the requirements for ''loan originators'' under § 1026.36, and still would not have been subject to other provisions of Regulation Z governing ''creditors.'' Instead, the only seller financers that would have been required to show that they satisfied the statutory and regulatory criteria were parties that engaged in up to three transactions and did not satisfy the second branch of the Regulation Z definition of creditor (i.e. made more than one high-cost mortgages per year.

The Bureau received a large number of comments strongly opposing the proposed treatment of the seller financer exclusion. These comments noted that seller financers are typically natural persons who would be unable to satisfy the ability to repay criteria of the proposed exclusion given what the commenters viewed as the complexities involved in the ability to repay analysis and the fact that consumers obtaining seller financing typically do not meet traditional underwriting standards. In addition, several commenters stated that the criterion to investigate ability to repay may place the seller financer in an unfair bargaining position with respect to the real estate transaction because the seller financer would have access to the buyer's financial information while also negotiating the property sale. Moreover, commenters asserted, an average private seller cannot always provide financing in compliance with the specific balloon, interest-only, introductory period, and amortization restrictions required by the proposed exclusion. Some commenters urged that seller financers should not be prohibited from financing agreements with these features.

Many commenters addressed the merits of seller financing in general. For example, some commenters noted that seller financing creates an opportunity for investors to buy foreclosed properties and resell them to buyers who cannot obtain traditional financing, thus helping to reduce the inventory of foreclosed properties via options unavailable to most creditors and buyers. Commenters additionally indicated that seller financing is one of only a few options in some cases, especially for first-time buyers, persons newly entering the workforce, persons with bad credit due to past medical issues, or where traditional creditors are unwilling to take a security interest in the property for various reasons. Many of these commenters asserted that this exclusion would curtail seller financing. Thus, certain buyers would be forced to seek financing from banks unlikely to lend to them, and many rural sales would not occur. Others argued that to qualify for this exclusion seller financers would need to meet onerous TILA and Regulation Z requirements.

One escrow trade association suggested that the Bureau increase the de minimis exemption (regularly extending credit threshold) for the definition of creditor to 25 or fewer credit transactions. Other trade associations suggested that the Bureau create an exemption for occasional seller financing similar to the SAFE Act's de minimis exemption for depository institutions or the loan originator business threshold for non-depository institutions. Furthermore, these trade associations suggested that the Bureau amend Regulation Z to exempt anyone from the definition of loan originator who is exempt from the licensing and registration requirements of the SAFE Act.

Many commenters who submitted a comment on the seller financer exclusion mistakenly believed that the proposal would amend Regulation Z to eliminate exclusions from the definition of creditor for persons who do not regularly extend credit and replace such exclusions with the exclusion in comment 36(a)–1.v. Many of these commenters also mistakenly stated that the exclusion would require all seller financers to finance sales of their homes according to the criteria in proposed comment 36(a)–1.v.

In response to comments, the Bureau is adopting the seller financer exclusion set forth in the statute in § 1026.36(a)(1)(i)(D), with additional clarifications, adjustments, and criteria in § 1026.36(a)(4) and (a)(5) and associated commentary discussed below.

In the final rule, persons (including estates or trusts) that finance the sale of three or fewer properties in any 12-month period would be seller financers excluded from the definition of ''loan originator'' if they meet one set of criteria that largely tracks the criteria for the mortgage financing exclusion in TILA section 103(cc)(2)(E). This exclusion is referred to as the ''three-property exclusion.'' Upon further consideration the Bureau believes it is also appropriate to exclude natural persons, estates, or trusts that finance the sale of only one property they own in any 12-month period under a more streamlined set of criteria provided in § 1026.36(a)(5). This exclusion is referred to as the ''one-property exclusion.'' The Bureau is not, however, adopting the interpretation discussed in the proposal that would have treated only seller financers that engage in two or three high-cost mortgage transactions as being required to demonstrate compliance with the requirements of the rule to qualify for the exclusion from the definition of loan originator. The criteria for satisfying the three- and one-property exclusions are discussed in detail in the section-by-section analyses of § 1026.36(a)(4) and (5), below.

As discussed in the proposal, the seller financer exclusion from the definition of ''loan originator'' in the statute is in addition to exclusions already available under TILA and Regulation Z, specifically the exclusion of creditors including seller financers that engage in five or fewer such transactions in a calendar year. Moreover, the exclusion is only for the purposes of provisions in § 1026.36 that apply to loan originators. Any person relying on the seller financer exclusion is thereby excluded only from the loan originator requirements of § 1026.36 and not the remaining requirements of § 1026.36 or other provisions of Regulation Z. For example, such a person would still be subject to the restrictions in § 1026.36(d) if the person pays compensation to a loan originator. Such a person would also have to comply with the § 1026.36(h) provision on mandatory arbitration.

In deciding to adopt two exclusions from the definition of loan originator for seller financers, the Bureau looked in part to the purposes of the seller financer exclusion in the statute, which the Bureau believes was designed primarily to accommodate persons or smaller-sized estates or family trusts with no, or less sophisticated, compliance infrastructures. Such persons and entities may engage in seller financer transactions on just a single or handful of properties, making it impracticable for them to develop and apply the types of underwriting practices and standards that are used routinely by traditional creditors. The Bureau has accordingly attempted to consider compliance burden and to calibrate the criteria appropriately to avoid unwarranted restrictions on access to responsible, affordable mortgage credit from such sources.

At the same time, the Bureau is also aware of concerns that persons or entities have been exploiting the existing exclusion in § 1026.2(a)(17)(v) of Regulation Z for persons that extend credit secured by a dwelling (other than high-cost mortgages) five or fewer times in the preceding calendar year, and might do the same with regard to this exclusion from the definition of loan originator under § 1026.36. In particular, the Bureau has received reports that persons may be recruiting multiple individuals or creating multiple entities to extend credit for five or fewer such transactions each and then acquiring the mortgages shortly after they have been consummated. Such conduct may be designed to evade the requirements of Regulation Z. In these circumstances, however, the person may in fact be extending credit for multiple transactions secured by a dwelling through an intermediary, and thus be subject to applicable requirements for creditors and/or loan originators under Regulation Z.

Managers, Administrative, or Clerical Staff

TILA section 103(cc)(2)(C) defines ''mortgage originator'' to exclude persons who do not otherwise engage in the core activities listed in the originator definition and perform purely administrative or clerical tasks on behalf of mortgage originators. Existing comment 36(a)–4 clarifies that managers, administrative staff, and similar individuals who are employed by a creditor or loan originator but do not arrange, negotiate, or otherwise obtain an extension of credit for a consumer, or whose compensation is not based on whether any particular loan is originated, are not loan originators. In the proposal, the Bureau stated that it believes the existing comment is largely consistent with TILA section 103(cc)(2)(C)'s treatment of administrative and clerical tasks.

The Bureau proposed minor technical revisions to existing comment 36(a)–4, however, to conform the language more closely to TILA section 103(cc)(2C) by including references to ''clerical'' staff and to taking applications and offering loan terms. The proposed revisions would also clarify that ''producing managers'' who meet the definition of a loan originator would be considered loan originators. The Bureau further stated in the proposal that producing managers generally are managers of an organization (including branch managers and senior executives) that, in addition to their management duties, also originate transactions subject to § 1026.36. Thus, compensation such as salaries, commissions, bonuses, or other financial or similar incentives received by producing managers in connection with loan origination activities would be subject to the restrictions of § 1026.36. Non-producing managers (*i.e.,* managers, senior executives, etc., who have a management role in an organization including, but not limited to, managing loan originators, but who do not otherwise meet the definition of loan originator) would not be considered loan originators if their compensation is not otherwise based on whether any particular loan is originated (*i.e.,* this exclusion from the definition of loan originator does not apply to non-producing managers who receive compensation based on particular transactions originated by other loan originators).

The Bureau also noted in the proposal that the statutory definition of the phrase, ''assists a consumer in obtaining or applying to obtain a residential mortgage loan,'' suggests that minor actions—*e.g.,* accepting a completed application form and delivering it to a loan officer, without assisting the consumer in completing it, processing or analyzing the information, or discussing transaction terms—constitute administrative and clerical tasks. In such situations, the person is not actively aiding or further achieving a completed credit application or collecting information on behalf of the consumer specific to a mortgage transaction. In the proposal, the Bureau stated its belief that this interpretation was also consistent with the exclusion in TILA section 103(cc)(2)(C)(i) for certain administrative and clerical persons.

Industry group and creditor commenters addressing proposed comment 36(a)–4 generally supported the Bureau's proposed revision. However, many industry groups and banks sought further clarification regarding ''producing managers.'' One bank commenter suggested that a manager who arranges, negotiates, or otherwise obtains an extension of consumer credit for another person but does not receive compensation specific to any particular transaction should not be considered a loan originator. Another industry association commenter was concerned that the proposal did not contain a clear definition of ''producing manager.'' The commenter noted that officers and managers need to be involved in loan originations from time to time and that their compensation is not directly based on such involvement in an individual transaction. Another industry association commenter described the issue as defining the boundary between a manager engaged in customary credit approval functions or setting terms in counter-offer situations, which are more akin to underwriting, and a manager actively arranging transactions for consumers.

The Bureau generally agrees that a person who approves credit transactions or sets terms of the transaction in counter-offer situations is not a loan originator (and also not a ''producing manager'')—provided any communication to or with the consumer regarding specific transaction terms, an offer, negotiation, a counter-offer, or approval conditions is made by a qualified loan originator. Moreover, persons who make underwriting decisions by receiving and evaluating the consumer's information to determine whether the consumer qualifies for a particular credit transaction or credit offer are considered to be engaged in management, administrative, or clerical tasks for the purposes of the rule if the persons only advise the loan originator or creditor on whether the credit may be extended or purchased and all communications to or with the consumer regarding specific transaction terms, an offer, negotiation, a counter-offer, or approval conditions with the consumer are made by a loan originator. Also, the Bureau considers persons who establish pricing that the creditor offers generally to the public, via advertisements or other marketing or via other persons who are qualified loan originators, to be engaged in management, administrative, or clerical tasks rather than loan origination activities. The Bureau is providing further clarifications on these points accordingly, in comment 36(a)–4.

The Bureau disagrees with the commenter suggesting that a manager who arranges, negotiates, or otherwise obtains an extension of consumer credit for another person but does not receive compensation specific to any particular transaction should not be considered a loan originator. Persons who receive compensation in connection with engaging in such loan origination activities, regardless of whether the compensation is specific to any particular transaction, are loan originators. For this reason, for other reasons discussed with respect to profits-based compensation plans and the new qualification and unique document identifier requirements in § 1026.36(f) and (g), and for reasons related to persons who perform other activities in addition to loan origination activities, the Bureau is revising comments 36(a)–1.i, 36(a)–4, 36(a)–4.v, and 36(a)–5 to clarify further that a person, including a manager, who is employed by a loan originator or creditor (and thus receives compensation from the employer) and who engages in the foregoing loan origination activities is a loan originator. The Bureau is therefore removing language referring to performance of loan origination activities not in the expectation of compensation because it believes that such language created circularity and could cause uncertainty in applying the broader definition of ''loan originator.''

Industry trade associations, large and small banks, and a credit union requested in their comment letters further clarification on whether certain ''back-office'' loan processing activities would be considered assisting a consumer in obtaining or applying to obtain an extension of credit and thus included in ''arranging'' or ''otherwise obtaining an extension of credit'' for the purposes of the ''loan originator'' definition. The Bureau believes that after a loan application has been submitted by the consumer to the loan originator or creditor, persons who: (1) Provide general explanations or descriptions in response to consumer queries, such as explaining credit terminology or policies, or describing product-related services; (2) verify information provided by the consumer in the credit application, such as by asking the consumer for supporting documentation or the consumer's authorization to obtain supporting documentation from other persons; or (3) compile and assemble credit application packages and supporting documentation to submit to the creditor while acting on behalf of a loan originator or creditor are not ''arranging'' or ''otherwise obtaining an extension of credit'' for the purposes of the definition of ''loan originator'' as described in more detail above. The Bureau is adding specific discussions of these activities to comment 36(a)–4.

Several industry group and bank commenters stated that the final rule should not apply to senior employees who assist consumers only under limited or occasional circumstances. Similarly, these and other industry trade association and bank commenters asserted that the definition of loan originator should not include any employees who are not primarily and regularly engaged in taking the consumer's application and offering or negotiating transaction terms with consumers. A large industry trade association commenter and a bank commenter indicated that the definition of loan originator should not include persons such as managers who originate fewer than a de minimis number of transactions per year, *i.e.,* five and twelve mortgages per year, respectively.

The Bureau believes that creating a complete de minimis exclusion from the mortgage originator restrictions of the Dodd-Frank Act for any person otherwise subject to them and involved in the credit business would be inconsistent with the statutory scheme. TILA section 103(cc)(2) contains a specific, conditional exclusion for seller financers who engage in three transactions or less in a 12-month period. It seems doubtful that Congress would have made that exclusion so limited if it intended other persons who are in the consumer credit business to benefit from a general exclusion where they participate in a perhaps even greater number of transactions. Unlike the licensing and registration provisions of the SAFE Act (12 U.S.C. 5103) for depositories and nondepositories respectively, Congress did not provide an explicit de minimis exclusion (see 12 U.S.C. 5106(c)) or reference individuals engaged in the ''business'' of loan origination in the Dodd-Frank Act for the new residential mortgage loan origination qualification and compensation requirements in section 129B(b) and (c) of TILA. In the Dodd-Frank Act, Congress merely referred to persons engaging in mortgage originator activities for compensation or gain with one narrow exclusion for seller financers not constructing or acting as a contractor for the construction of a residence on the property being financed in the ordinary course of business. Given the above, the Bureau believes that a narrow exemption for pooled compensation, for example, is more appropriate than a wholesale exclusion from the definition of loan originator for persons otherwise involved with the credit business.

The Bureau believes that the absence of such an exclusion or exemption further demonstrates that Congress intended the definition of ''mortgage originator'' in TILA, and thus the scope of coverage of TILA's compensation, qualification, and loan document unique identifier provisions, to be broader than the somewhat similar definition of ''loan originator'' in the SAFE Act, which sets the scope of coverage of the SAFE Act's licensing and registration requirements. The Bureau therefore is not including in the final rule an exemption from its provisions for persons other than seller financers engaged in a limited number of credit transactions per year. The Bureau further believes that declining to create such a de minimis exemption for other persons provides protections for consumers that outweigh any other public benefit that an exemption might provide. However, as discussed in more detail in the section-by-section analysis of § 1026.36(d)(1)(iv), the Bureau believes that a limited de minimis exemption from the prohibition on compensation based on a term of a transaction for participation in profits-based compensation plans is appropriate for loan originators who originate ten or fewer loans in a twelve-month period.

36(a)(1)(ii); 36(a)(1)(iii)

Certain provisions of TILA section 129B, such as the qualification and loan document unique identifier requirements, as well as certain new clarifications in the regulation that the Bureau proposed (and now is adopting), necessitate a distinction between loan originators who are natural persons and those that are organizations. The Bureau therefore proposed to establish the distinction by creating new definitions for ''individual loan originator'' and ''loan originator organization'' in new § 1026.36(a)(1)(ii) and (iii). Proposed § 1026.36(a)(1)(ii) would have defined an individual loan originator as a natural person that meets the definition of loan originator in § 1026.36(a)(1)(i). Proposed § 1026.36(a)(1)(iii), in turn, would have defined a loan originator organization as any loan originator that is not an individual loan originator.

The Bureau proposed to revise comment 36(a)–1.i.B to clarify that the term ''loan originator organization'' is a loan originator other than a natural person, including but not limited to a trust, sole proprietorship, partnership, limited liability partnership, limited partnership, limited liability company, corporation, bank, thrift, finance company, or a credit union. As discussed in the supplementary information of the proposed rule, the Bureau understands that States have recognized many new business forms over the past 10 to 15 years. The Bureau believed that the additional examples provided in the proposal should help to facilitate compliance with § 1026.36 by clarifying the types of persons that fall within the definition of ''loan originator organization.'' The Bureau invited comment on whether other examples would be helpful for these purposes.

The Bureau received very few comments on the proposed definitions for individual loan originator and loan originator organization. One creditor commenter thought that the additional definitions would add further complexity to describe the various persons acting in the mortgage market. This commenter thought the proposal should return to the definitions that existed in the TILA and Regulation Z framework prior to issuance by the Board of its 2010 Loan Originator Final Rule. That is, this commenter argued, the Bureau should use the terms ''individual loan originator'' or ''individual loan officer'' and either ''mortgage broker'' or ''creditor'' as appropriate.

The Bureau is adopting § 1026.36(a)(1)(ii) and (iii) as proposed. The Bureau is also adopting comment 36(a)–1.i.B largely as proposed but with the further clarification that ''loan originator organization'' includes any legal existence other than a natural person. The comment is also adopted in comment 36(a)–1.i.D instead of comment 36(a)–1.i.B as proposed. The Bureau is using the terms ''individual loan originator'' and ''loan originator organization'' to facilitate use of the Bureau's authority to permit loan originator organizations to share compensation on a particular transaction with individual loan originators. Moreover, creditors occasionally act as mortgage brokers and are considered loan originators in their own right for purposes of the qualification and unique identifier provisions in § 1026.36(f) and (g). Accordingly, the Bureau believes use of the terms is appropriate and necessary to allow greater precision and to facilitate compliance with the statutory and regulatory requirements.

36(a)(2) Mortgage Broker

TILA section 129B(b)(1) imposes new substantive requirements on all mortgage originators, including creditors involving qualification requirements and the requirement to include a unique identifier on loan documents, which the Bureau is proposing to implement in § 1026.36(f) and (g). The compensation restrictions applicable to loan originators in existing § 1026.36 also applied to creditors engaged in table-funded transactions. Existing § 1026.36(a)(2) defines ''mortgage broker'' as ''any loan originator that is not an employee of the creditor.'' This definition would include creditors engaged in table-funded transactions. The Bureau therefore proposed a conforming amendment to exclude creditors for table-funded transactions from the definition of ''mortgage broker'' even though for certain purposes such creditors are loan originators to accommodate the new qualification and unique identifier requirements. Proposed § 1026.36(a)(2) provided that a mortgage broker is ''any loan originator that is not a creditor or the creditor's employee.''

The Bureau did not receive any comment on this proposal. The Bureau, however, is not revising the definition of ''mortgage broker'' as proposed. The revisions made by this final rule to the definition of ''loan originator'' in § 1026.36(a)(1)(i) accommodate creditors engaged in table-funded transactions and other creditors for the purposes of applying the new substantive requirements in § 1026.36(f) and (g) and the remaining requirements of § 1026.36 generally. Conforming amendments to existing § 1026.36(a)(2) are no longer necessary.

36(a)(3) Compensation

Sections 1401 and 1403 of the Dodd-Frank Act contain multiple references to the term ''compensation'' but do not define the term. The existing rule does not define the term in regulatory text. Existing comment 36(d)(1)–1, however, provides interpretation on the meaning of compensation.

Definition of Compensation and Comment 36(a)–5.i and ii

Existing comment 36(d)(1)–1.i provides that the term ''compensation'' includes salaries, commissions, and any financial or similar incentive provided to a loan originator that is based on any of the terms or conditions of the loan originator's transactions. The Bureau proposed to define the term ''compensation'' in new § 1026.36(a)(3) to include ''salaries, commissions, and any financial or similar incentive provided to a loan originator for originating loans,'' intending this definition to be consistent with the interpretation in the existing commentary in 36(d)(1)–1.i, as explained in the proposal. Consistent with this proposed definition, proposed comment 36(a)–5.i stated that compensation is defined in § 1026.36(a)(3) as salaries, commissions, and any financial or similar incentive provided to a person for engaging in loan origination activities. Existing comment 36(d)(1)–1.i also provides examples of compensation, and those provisions would have been transferred to proposed comment 36(a)–5.i without revision.

Existing comment 36(d)(1)–1.ii clarifies that compensation includes amounts the loan originator retains and is not dependent on the label or name of any fee imposed in connection with the transaction. The Bureau proposed to transfer these provisions to new proposed comment 36(a)–5.ii without revision.

To clarify the intent of the definition of compensation, the final rule revises the definition in § 1026.36(a)(3) to include ''salaries, commissions, and any financial or similar incentive'' without specifying ''provided to a loan originator for originating loans.'' The Bureau believes that the definition of ''compensation'' adopted in the final rule is more consistent with the intent and wording of the existing interpretation on the meaning of compensation set forth in existing comment 36(d)(1)–1.i, and is less circular when viewed in conjunction with the definition of ''loan originator.'' Consistent with the definition of ''compensation'' as adopted in § 1026.36(a)(3), the final rule revises comment 36(a)–5.i to reflect that compensation is defined in § 1026.36(a)(3) as salaries, commissions, and any financial or similar incentive. The final rule also revises comment 36(a)–5.ii to reflect that the definition of compensation in § 1036(a)(3) applies to § 1026.36 generally, including § 1026.36(d) and (e).

Third-Party Charges and Charges for Services That Are Not Loan Origination Activities

Existing comment 36(d)(1)–1.iii provides that compensation includes amounts the loan originator retains, but does not include amounts the originator receives as payments for bona fide and reasonable third-party charges, such as title insurance or appraisals. The Bureau proposed to revise existing comment 36(d)(1)–1.iii (redesignated as proposed comment 36(a)–5.iii) to make more clear that the term ''third party'' does not include the creditor, its affiliates, or the affiliates of the loan originator. Specifically, proposed comment 36(a)–5.iii would have clarified that the term ''compensation'' as used in § 1026.36 does not include amounts a loan originator receives as payment for bona fide and reasonable charges, such as credit reports, where those amounts are not retained by the loan originator but are paid to a third party that is not the creditor, its affiliate, or the affiliate of the loan originator.

The proposed revisions would have been consistent with provisions set forth in TILA section 129B(c)(2) concerning exceptions to the general prohibition on dual compensation for payments made to bona fide third-party service providers, as added by section 1403 of the Dodd-Frank Act. Specifically, TILA section 129B(c)(2)(A) provides that, for any mortgage loan,[69] a mortgage originator generally may not receive from any person other than the consumer any origination fee or charge except bona fide third-party charges not retained by the creditor, the mortgage originator, or an affiliate of either. Likewise, no person, other than the consumer, who knows or has reason to know that a consumer has directly compensated or will directly compensate a mortgage originator, may pay a mortgage originator any origination fee or charge except bona fide third-party charges as described above. In addition, TILA section 129B(c)(2)(B) provides that a mortgage originator may receive an origination fee or charge from a person other than the consumer if, among other things, the mortgage originator does not receive any compensation directly from the consumer. As discussed in more detail in the section-by-section analysis of § 1026.36(d)(2), the proposal interpreted ''origination fee or charge'' to mean compensation that is paid in connection with the transaction, such as commissions that are specific to, and paid solely in connection with, the transaction.

Nonetheless, TILA section 129B(c)(2) does not prevent a mortgage originator from receiving payments from a person other than the consumer for bona fide third-party charges not retained by the creditor, mortgage originator, or an affiliate of either, even if the mortgage originator also receives loan originator compensation directly from the consumer. For example, assume that a mortgage originator receives compensation directly from a consumer in a transaction. TILA section 129B(c)(2) does not restrict the mortgage originator from receiving payment from a person other than the consumer (*e.g.,* a creditor) for bona fide charges, such as title insurance or appraisals, where those amounts are not retained by the loan originator but are paid to a third party that is not the creditor, its affiliate, or the affiliate of the loan originator.

Consistent with TILA section 129B(c)(2), under proposed § 1026.36(d)(2)(i) and proposed comment 36(a)–5.iii, a loan originator that receives compensation directly from a consumer would not have been restricted under proposed § 1026.36(d)(2)(i) from receiving a payment from a person other than the consumer for bona fide and reasonable charges where those amounts are not retained by the loan originator but are paid to a third party that is not the creditor, its affiliate, or the affiliate of the loan originator. In addition, a loan originator would not be deemed to be receiving compensation directly from a consumer for purposes of proposed § 1026.36(d)(2)(i) where the originator imposes such a bona fide and reasonable third-party charge on the consumer.

Like existing comment 36(d)(1)–1, proposed comment 36(a)–5.iii also would have recognized that, in some cases, amounts received for payment for such third-party charges may exceed the actual charge because, for example, the loan originator cannot determine with accuracy what the actual charge will be before consummation. In such a case, under proposed comment 36(a)–5.iii, the difference retained by the originator would not have been deemed compensation if the third-party charge collected from a person other than the consumer was bona fide and reasonable, and also complies with State and other applicable law. On the other hand, if the loan originator marks up a third-party charge and retains the difference between the actual charge and the marked-up charge, the amount retained would have been compensation for purposes of § 1026.36(d) and (e).

Proposed comment 36(a)–5.iii, like existing comment 36(d)(1)–1.iii, would have contained two illustrations. The illustrations in proposed comment 36(a)–5.iii.A and B would have been similar to the ones contained in existing comment 36(d)(1)–1.iii.A and B except that the illustrations would have been amended to clarify that the charges described in those illustrations are not paid to the creditor, its affiliates, or the affiliate of the loan originator. The proposed illustrations also would have simplified the existing illustrations.

The Bureau solicited comment on proposed comment 36(a)–5.iii. Specifically, the Bureau requested comment on whether the term ''compensation'' should exclude payment from the consumer or from a person other than the consumer to the loan originator, as opposed to a third party, for certain unambiguously ancillary services rather than core loan origination services, such as title insurance or appraisal, if the loan originator, creditor or the affiliates of either performs those services, so long as the amount paid for those services is bona fide and reasonable. The Bureau further solicited comment on how such ancillary services might be described clearly enough to distinguish them from the core origination charges that would not be excluded under such a provision.

Several industry commenters suggested that the definition of ''compensation'' in § 1026.36(a)(3) should exclude payments to loan originators for services other than core loan origination services, such as title insurance or appraisal, regardless of whether the loan originator, creditor, or affiliates of either are providing these services, so long as the amount charged for those services are bona fide and reasonable. Other industry commenters suggested that the Bureau specifically exclude bona fide and reasonable affiliate fees from the definition of ''compensation'' in § 1026.36(a)(3). These commenters argued that there is no basis for a distinction between affiliate and non-affiliate charges. These commenters also argued that a requirement that both affiliate and non-affiliate charges be bona fide and reasonable would be sufficient to

[69] TILA section 129B(c)(2) uses the term ''mortgage loan'' rather than the ''residential mortgage loan'' used in TILA section 129B(c)(1), which generally prohibits compensation from being paid to loan originators based on loan terms. Nonetheless, the Bureau believes that the restrictions in TILA section 129B(c)(2) are limited to ''residential mortgage loans'' because TILA section 129B(c)(2) applies to mortgage originators. The definition of ''mortgage originator'' in TILA section 103(cc)(2) generally means a person who for compensation takes a residential mortgage loan application; assists a consumer in obtaining or applying to obtain a residential mortgage loan, or offers or negotiates terms of a residential mortgage loan.

protect consumers. In addition, several commenters stated that affiliated business arrangements are expressly permitted and regulated by RESPA. One commenter further argued that the Bureau's proposal discourages the use of affiliates, which undercuts a goal of the Bureau's 2012 TILA–RESPA Proposal to increase certainty around the costs imposed by affiliated providers by providing for a zero tolerance for settlement charges of affiliated entities. Another commenter stated that fees paid to affiliated parties for services such as property insurance, home warranties (both service contract and insurance products), and similar services should be excluded from the definition of ''compensation'' in the same manner as third-party charges. The commenter stated that all of these types of services relate to the purchase of a home, and are traditionally purchased or maintained regardless of whether the home purchase is financed. Therefore, the commenter suggested that these types of services are clearly not related to core loan origination services, *i.e.,* taking an application, assisting in obtaining a loan, or offering/negotiating loan terms.

Certain industry commenters also expressed particular concern that affiliated title charges were not explicitly excluded from the definition of ''compensation.'' These commenters stated that there is no rational basis for not explicitly excluding affiliated title charges from the definition of ''compensation'' because, for example, title insurance fees are regulated at the State level either through statutorily prescribed rates or through a requirement that title insurance premiums be publicly filed. These commenters noted that, as a result of State regulation, there is little variation in title insurance charges from provider to provider and such charges are not subject to manipulation. In a variation of the argument that the Bureau generally should exclude affiliate charges from the definition of ''compensation,'' some industry commenters suggested that the Bureau should adopt a specific exclusion for affiliates' title fees to the extent such fees are otherwise regulated at the State level, or to the extent that such charges are reasonable and do not exceed the cost for an unaffiliated issuers title insurance.

With respect to third-party charges, the final rule adopts comment 36(a)–5.iii substantially as proposed, except that the interpretation discussing situations where the amounts received for payment for third-party charges exceeds the actual charge has been moved to comment 36(a)–5.v, as discussed in more detail below. The Bureau notes that comment 36(a)–5.iii uses the term ''bona fide and reasonable'' to describe third-party charges. As in the 2013 ATR Final Rule and 2013 HOEPA Final Rule, in response to commenters' concerns that the ''reasonableness'' of third-party charges may be second-guessed, the Bureau notes its belief that the fact that a transaction for such third-party services is conducted arms-length ordinarily should be sufficient to make the charge reasonable.

In addition, based on comments received and the Bureau's own analysis, the final rule revises comment 36(a)–5.iv to clarify whether payments for services that are not loan origination activities are compensation under § 1026.36(a)(3). As adopted in the final rule, comment 36(a)–5.iv.A clarifies that the term ''compensation'' for purposes of § 1026.36(a)(3) does not include: (1) A payment received by a loan originator organization for bona fide and reasonable charges for services it performs that are not loan origination activities; (2) a payment received by an affiliate of a loan originator organization for bona fide and reasonable charges for services it performs that are not loan origination activities; or (3) a payment received by a loan originator organization for bona fide and reasonable charges for services that are not loan origination activities where those amounts are not retained by the loan originator organization but are paid to the creditor, its affiliate, or the affiliate of the loan originator organization. Comment 36(a)–5.iv.C as adopted clarifies that loan origination activities for purposes of that comment means activities described in § 1026.36(a)(1)(i) (*e.g.,* taking an application, offering, arranging, negotiating, or otherwise obtaining an extension of consumer credit for another person) that would make a person performing those activities for compensation a loan originator as defined in § 1026.36(a)(1)(i).

The Bureau recognizes that loan originator organizations or their affiliates may provide services to consumers that are not loan origination activities, such as title insurance, if permitted by State and other applicable law. If the term ''compensation'' for purposes of § 1026.36(a)(3) were applied to include amounts paid by the consumer or a person other than the consumer for services that are not loan origination activities, the loan originator organization or its affiliates could be restricted under § 1026.36(d)(1) and (d)(2) from being paid for those services. For example, assume a loan originator organization provides title insurance services to consumers and that title insurance is required on a transaction and thus is a term of the transaction under § 1026.36(d)(1)(ii). In addition, assume the loan originator organization receives compensation from the creditor in a transaction. If compensation for purposes of § 1026.36(a)(3) included amounts paid for these services by consumers to the loan originator organization, the payment of the charge to the loan originator organization for title insurance services would be prohibited by § 1026.36(d)(1) because the amount of the loan originator organization's compensation would increase based on a term of the transaction, namely the fact that the consumer received the title insurance services from the loan originator instead of a third party. In addition, the loan originator organization would be prohibited by the dual compensation provisions in § 1026.36(d)(2) (redesignated as § 1026.36(d)(2)(i)) from both collecting the title insurance fee from the consumer, and also receiving compensation from the creditor for this transaction.

Likewise, assume the same facts, except that the loan originator organization's affiliate provided the title insurance services to the consumer. The amount of any payment to the affiliate directly or through the loan originator organization for the title insurance would be considered compensation to the loan originator organization because under § 1026.36(d)(3) the loan originator organization and its affiliates are treated as a single person. Thus, if compensation for purposes of § 1026.36(a)(3) included amounts paid for the title insurance services to the affiliate, the affiliate could not receive payment for the title insurance services without the loan originator organization violating § 1026.36(d)(1) and (d)(2).

The Bureau also recognizes that loan originator organizations may receive payment for services that are not loan origination activities where those amounts are not retained by the loan originator but are paid to the creditor, its affiliate, or the affiliate of the loan originator organization. For example, assume a loan originator organization receives compensation from the creditor in a transaction. Further assume the loan originator organization collects from the consumer $25 for a credit report provided by an affiliate of the creditor, and this fee is bona fide and reasonable. Assume also that the $25 for the credit report is paid by the consumer to the loan originator organization but the loan originator organization does not retain this $25.

Instead, the loan originator organization pays the $25 to the creditor's affiliate for the credit report. If the term ''compensation'' for purposes of § 1026.36(a)(3) included amounts paid by the consumer or a person other than the consumer for such services that are not loan origination activities, the loan originator organization would be prohibited by § 1026.36(d)(2) (redesignated as § 1026.36(d)(2)(i)) from both collecting this $25 fee from the consumer, and also receiving compensation from the creditor for this transaction.

The Bureau believes that it is appropriate for loan originator organizations and their affiliates to receive payments for services that are not loan origination activities, as described above, so long as the charge imposed on the consumer or collected from a person other than the consumer for these services is bona fide and reasonable. The Bureau believes that the bona fide and reasonable standards will provide sufficient protection to prevent loan originator organizations from circumventing the restrictions in § 1026.36(d)(1) and (2) by disguising compensation for loan origination activities within ancillary service charges.

The Bureau notes, however, that the final rule does not allow individual loan originators to distinguish between payments they receive for performing loan origination activities and payments purportedly being received for performing other activities. Comment 36(a)–5.iv.B as adopted in the final rule makes clear that compensation includes any salaries, commissions, and any financial or similar incentive provided to an individual loan originator, regardless of whether it is labeled as payment for services that are not loan origination activities. The Bureau believes that allowing individual loan originators to distinguish between these two types of payments would promote circumvention of the restrictions on compensation in § 1026.36(d)(1) and (2). For example, if an individual loan originator were allowed to exclude from the definition of ''compensation'' payments to it by the loan originator organization by asserting that this payment was received for performing activities that are not loan origination activities, a loan originator organization and/or the individual loan originator could disguise compensation for loan origination activities by simply labeling those payments as received for activities that are not loan origination activities. The Bureau believes that it would be difficult for compliance and enforcement purposes to determine whether the payments that were labeled as received for activities that are not loan origination activities were legitimate payment for those activities or whether these payments were labeled as payments for activities that are not loan origination activities merely to evade the restrictions in § 1026.36(d)(1) and (2).

The Bureau further notes that the additional interpretation in comment 36(a)–5.iv as adopted in the final rule does not permit a loan originator organization or an individual loan originator to receive compensation based on whether the consumer obtains an ancillary service from the loan originator organization or its affiliate if that service is a term of the transaction under § 1026.36(d)(1). For example, assume that title insurance is required for a transaction and thus is a term of the transaction under § 1026.36(d)(1)(ii). In this case, a loan originator organization would be prohibited under § 1026.36(d)(1) from charging the consumer compensation of 1.0 percent of the loan amount if the consumer obtains title insurance from the loan originator organization, but charging the consumer 2.0 percent of the loan amount if the consumer does not obtain title insurance from the loan originator organization. Likewise, in that transaction, an individual loan originator would be prohibited under § 1026.36(d)(1) from receiving a larger amount of compensation from the loan originator organization if the consumer obtained title insurance from the loan originator organization as opposed to obtaining title insurance from a third party.

As discussed above, the final rule moves the interpretation in proposed comment 36(a)–5.iii discussing situations where the amounts received for payment for third-party charges exceeds the actual charge to comment 36(a)–5.v, and revises it. The final rule also extends this interpretation to amounts received by the loan originator organization for payment for services that are not loan origination activities where those amounts are not retained by the loan originator but are paid to the creditor, its affiliate, or the affiliate of the loan originator organization.

Specifically, as discussed above, comment 36(a)–5.iii as adopted in the final rule clarifies that the term ''compensation'' as used in § 1026.36 does not include amounts a loan originator receives as payment for bona fide and reasonable charges, such as credit reports, where those amounts are not retained by the loan originator but are paid to a third party that is not the creditor, its affiliate, or the affiliate of the loan originator. In addition, comment 36(a)–5.iv.A.*3* clarifies that compensation does not include the amount the loan originator organization receives as payment for bona fide and reasonable charges for services that are not loan origination activities where those amounts are not retained by the loan originator but are paid to the creditor, its affiliate, or the affiliate of the loan originator organization. Comment 36(a)–5.v notes that, in some cases, amounts received by the loan originator organization for payment for third-party charges described in comment 36(a)–5.iii or payment for services to the creditor, its affiliates, or the affiliates of the loan originator organization described in comment 36(a)–5.iv.A.*3* may exceed the actual charge because, for example, the loan originator organization cannot determine with accuracy what the actual charge will be when it is imposed and instead uses average charge pricing (in accordance with RESPA). In such a case, comment 36(a)–5.v provides that the difference retained by the loan originator organization is not compensation if the charge imposed on the consumer or collected from a person other than the consumer was bona fide and reasonable, and also complies with State and other applicable law. On the other hand, if the loan originator organization marks up the charge (a practice known as ''upcharging''), and the loan originator organization retains the difference between the actual charge and the marked-up charge, the amount retained is compensation for purposes of § 1026.36, including § 1026.36(d) and (e). Comment 36(a)–5.v as adopted in the final rule contains two examples illustrating this interpretation.

Returns on Equity Interests and Dividends on Equity Holdings

In the proposal, the Bureau proposed new comment 36(a)–5.iv to clarify that the definition of compensation for purposes of § 1026.36(d) and (e) includes stock, stock options, and equity interests that are provided to individual loan originators and that, as a result, the provision of stock, stock options, or equity interests to individual loan originators is subject to the restrictions in § 1026.36(d) and (e). The proposed comment would have further clarified that bona fide returns or dividends paid on stock or other equity holdings, including those paid to loan originators who own such stock or equity interests, are not considered compensation for purposes of § 1026.36(d) and (e). The comment would have explained that: (1) Bona fide returns or dividends are those returns and dividends that are paid pursuant to documented ownership or equity interests allocated according to capital contributions and where the payments are not mere subterfuges for the payment of compensation based on transaction terms; and (2) bona fide ownership or equity interests are ownership or equity interests not allocated based on the terms of a loan originator's transactions. The comment would have given an example of a limited liability company (LLC) loan originator organization that allocates its members' respective equity interests based on the member's transaction terms; in that instance, the distributions are not bona fide and, thus, are considered compensation for purposes of § 1026.36(d) and (e). The Bureau stated that it believed the clarification provided by proposed comment 36(a)–5.iv was necessary to distinguish legitimate returns on ownership from returns on ownership in companies that manipulate business ownership structures as a means to circumvent the restrictions on compensation in § 1026.36(d) and (e).

The Bureau invited comment on proposed comment 36(a)–5.iv and on whether other forms of corporate structure or returns on ownership interest should have been specifically addressed in the definition of ''compensation.'' The Bureau also sought comment generally on other methods of providing incentives to loan originators that the Bureau should have considered specifically addressing in the proposed interpretation of the term ''compensation.'' The Bureau received only one comment substantively addressing the issues raised in the proposed comment. A State credit union trade association commented that the proposed redefinition of compensation to include stock, stock options, and equity interests that are provided to individual loan originators would ''exponentially'' increase the cost of record retention because, the commenter argued, the records must be retained for each individual loan originator. The association believed the proposed three-year retention requirement in § 1026.25(c)(2) would not otherwise be problematic but for the revised definition of compensation.

The Bureau has not made any changes in response to this commenter. The Bureau disagrees with the commenter that the proposed redefinition of compensation to include stock, stock options, and equity interests that are provided to individual loan originators would increase the costs of record retention at all, let alone an ''exponential'' amount. The Bureau believes that records evidencing the award of stock and stock options are no more difficult and expensive to retain than records evidencing payment of cash compensation, particularly if such awards are made pursuant to a stock options plan or similar company-wide plan. Moreover, the awarding of equity interests to an individual loan originator by a creditor or loan originator organization presumably would be documented by an LLC agreement or similar legal document, which can be easily and inexpensively retained (as can the records of any distributions made under the LLC or like agreement).

Accordingly, the Bureau is adopting the substance of proposed comment 36(a)–5.iv (but codified as comment 36(a)–5.vi because of additional new comments being adopted) as proposed, with two changes. First, comment 36(a)–5.vi references ''loan originators'' rather than ''individual loan originators'' whereas the proposal language used such terms inconsistently. Reference to ''loan originators'' is appropriate to account for the possibility that the comment could, depending on the circumstances, apply to a loan originator organization or an individual loan originator. Second, comment 36(a)–5.vi now includes an additional clarification about what constitutes ''bona fide'' ownership and equity interests. The proposed comment would have clarified that the term ''compensation'' for purposes of § 1026.36(d) and (e) does not include bona fide returns or dividends paid on stock or other equity holdings. The proposed comment would have clarified further that returns or dividends are ''bona fide'' if they are paid pursuant to documented ownership or equity interests, if they are not functionally equivalent to compensation, and if the allocation of bona fide ownership and equity interests according to capital contributions is not a mere subterfuge for the payment of compensation based on transaction terms. In addition to these clarifications which the Bureau is adopting as proposed, the final comment clarifies that ownership and equity interests are not ''bona fide'' if the formation or maintenance of the business organization from which returns or dividends are paid is a mere subterfuge for the payment of compensation based on the terms of transactions. The Bureau believes this additional language is necessary to prevent evasion of the rule through the use of corporations, LLCs, or other business organizations as vehicles to pass through payments to loan originators that otherwise would be subject to the restrictions of § 1026.36(d) and (e).

36(a)(4) Seller Financers; Three Properties

In support of the exclusion for seller financers in § 1026.36(a)(1)(i)(D) discussed above, under the statute's exclusion incorporated with clarifications, adjustments, and additional criteria into the rule as the three-property exclusion in § 1026.36(a)(4), a person (as defined in § 1026.2(a)(22), to include an estate or trust) that meets the criteria in § 1026.36(a)(4) is not a loan originator under § 1026.36(a)(1).[70] In § 1026.36(a)(4) the Bureau has largely preserved the statutory criteria for the seller financer exclusion but with some alternatives to reduce complexity and facilitate compliance, while balancing the needs of consumers, including by adding three additional criteria.

The first criterion is that the person provides seller financing for the sale of three or fewer properties in any 12-month period to purchasers of such properties, each of which is owned by the person and serves as security for the financing. This criterion tracks the introductory language of TILA section 103(cc)(2)(E).

The second criterion is that the person has not constructed, or acted as a contractor for the construction of, a residence on the property in the ordinary course of business of the person. This criterion tracks TILA section 103(cc)(2)(E)(i).

The third criterion is that the person provides seller financing that meets three requirements: First, the financing must be fully amortizing. This requirement tracks TILA section 103(cc)(2)(E)(ii). Second, the person must determine in good faith that the consumer has a reasonable ability to repay. The language of this requirement largely tracks TILA section 103(cc)(2)(E)(iii). It departs from the statute, however, in that it does not require documentation of the good faith

[70] The Bureau's proposal would have implemented the seller financer exclusion in TILA section 103(cc)(2)(E) to be available only to ''natural persons,'' estates, and trusts. *See* 77 FR at 55288, 55357. As discussed below, the three-property exclusion in the final rule is available to ''persons,'' estates, and trusts, consistent with the language in TILA section 103(cc)(2)(E). ''Person'' is defined in § 1026.2(a)(22) to mean ''a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.'' *See also* 15 U.S.C. 1602(d) and (e). The Bureau is not including the words ''estate'' and ''trust'' in the three-property exclusion, as the term ''person'' includes estates and trusts. In contrast, the one-property exclusion in the final rule is available only to ''natural persons,'' estates, and trusts.

determination. Where seller financers retain such documentation, they will be able to respond to questions that could arise as to their compliance with TILA and Regulation Z. However, pursuant to its authority under TILA section 105(a), the Bureau is not adopting a requirement that the seller document the good faith determination. The Bureau believes that the statute's exclusion is designed primarily to accommodate persons or smaller-sized estates or family trusts with no, or less sophisticated, compliance infrastructures. If technical recordkeeping violations were sufficient to jeopardize a person's status as a seller financer, this could limit the value of the exclusion. Accordingly, the Bureau believes that alleviating such burdens for seller financers will effectuate the purposes of TILA by ensuring that responsible, affordable mortgage credit remains available to consumers and will facilitate compliance by seller financers.

The third requirement of this third criterion is that the financing have a fixed rate or an adjustable rate that is adjustable after five or more years, subject to reasonable annual and lifetime limitations on interest rate increases. This requirement largely tracks TILA section 103(cc)(2)(E)(iv). However, the Bureau believes that, for the financing to have reasonable annual and lifetime limitations on interest rate increases, the foundation upon which those limitations is based must itself be reasonable. This requirement can be met if the index is widely published. Accordingly, the final rule also provides: (1) If the financing agreement has an adjustable rate, the rate must be determined by the addition of a margin to an index and be subject to reasonable rate adjustment limitations; and (2) the index on which the adjustable rate is based must be a widely available index such as indices for U.S. Treasury securities or LIBOR. The Bureau is interpreting and adjusting the criterion in TILA section 103(cc)(2)(E)(iv) using its authority under TILA section 105(a). The Bureau believes its approach effectuates the purposes of TILA in ensuring consumers are offered and receive consumer credit that is understandable and not unfair, deceptive or abusive. To the extent the additional provisions could be considered additional criteria, the Bureau is also exercising its authority under TILA section 103(cc)(2)(E)(v) to add additional criteria.

The Bureau is adding a new comment 36(a)(4)–1 to explain how a person can meet the criterion on a good faith determination of ability to repay under the three-property exclusion. It provides that the person determines in good faith that the consumer has a reasonable ability to repay the obligation if the person either complies with general ability-to-repay standards in § 1026.43(c) or complies with alternative criteria described in the comment.

The Bureau is providing the option of making the good faith determination of ability to repay based on alternative criteria using its interpretive authority under TILA section 105(a) and section 1022 of the Dodd-Frank Act. The Bureau believes that many seller financers who may occasionally finance the sales of properties they own may not be in a position feasibly to comply with all of the requirements of § 1026.43(c) in meeting the criterion in TILA section 103(cc)(2)(E)(iii). As discussed above, the Bureau believes that the statute's exclusion is designed primarily to accommodate persons or smaller-sized estates or family trusts with no, or less sophisticated, compliance infrastructures. Furthermore, providing alternative standards to meet this criterion will help ensure that responsible, affordable seller financing remains available to consumers consistent with TILA section 129B(a)(1).

New comment 36(a)(4)–1 explains how a person could consider the consumer's income to make the good faith determination of ability to repay. If the consumer intends to make payments from income, the person considers evidence of the consumer's current or reasonably expected income. If the consumer intends to make payments with income from employment, the person considers the consumer's earnings, which may be reflected in payroll statements or earnings statements, IRS Form W–2s or similar IRS forms used for reporting wages or tax withholding, or military Leave and Earnings Statements. If the consumer intends to make payments from other income, the person considers the consumer's income from sources such as from a Federal, State, or local government agency providing benefits and entitlements. If the consumer intends to make payments from income earned from assets, the person considers income from the relevant assets, such as funds held in accounts with financial institutions, equity ownership interests, or rental property. However, the value of the dwelling that secures the financing does not constitute evidence of the consumer's ability to repay. In considering these and other potential sources of income to determine in good faith that the consumer has a reasonable ability to repay the obligation, the person making that determination may rely on copies of tax returns the consumer filed with the IRS or a State taxing authority.

New comment 36(a)(4)–2 provides safe harbors for the criterion that a seller financed adjustable rate financing be subject to reasonable annual and lifetime limitations on interest rate increases. New comment 36(a)(4)–2.i. provides that an annual rate increase of two percentage points or less is reasonable. New comment 36(a)(4)–2.ii. provides that a lifetime limitation of an increase of six percentage points or less, subject to a minimum floor of the person's choosing and maximum ceiling that does not exceed the usury limit applicable to the transaction, is reasonable.

36(a)(5) Seller Financers; One Property

In support of the exclusion for seller financers in § 1026.36(a)(1)(i)(D) discussed above, the Bureau is further establishing criteria for the one-property exclusion in § 1026.36(a)(5). The Bureau has attempted to implement the statutory exclusion in a way that effectuates congressional intent, but remains concerned that the exclusion is fairly complex. The Bureau understands that natural persons, estates, and trusts that rarely engage in seller financing may engage in such transactions a few times during their lives in the case of natural persons or perhaps not more than once for estates or family trusts. For this reason, and given the complexities commenters highlighted of the seller financer exclusion in the statute, the Bureau is establishing an additional exclusion where only one property is financed in a given 12-month period.

Under the exclusion incorporated into the final rule as the one-property exclusion in § 1026.36(a)(5), a natural person, an estate, or a trust (but not other persons) that meets the criteria in that paragraph is not a loan originator under § 1026.36(a)(1). The first criterion is that the natural person, estate, or trust provides seller financing for the sale of only one property in any 12-month period to purchasers of such property, which is owned by the natural person, estate, or trust and serves as security for the financing. This criterion is similar to the introductory language of TILA section 103(cc)(2)(E), except that rather than a three-property maximum per 12-month period, the one-property exclusion uses a one-property maximum per 12-month period.

The second criterion is that the natural person, estate, or trust has not constructed, or acted as a contractor for the construction of, a residence on the property in the ordinary course of business of the person, estate or trust. Again, this criterion tracks TILA section 103(cc)(2)(E)(i).

The third criterion is that the financing meet two requirements: First, the financing must have a repayment schedule that does not result in negative amortization. This requirement is narrower than the criterion in TILA section 103(cc)(2)(E)(ii), which requires that the financing be fully amortizing, not just that it does not result in negative amortization. The second requirement parallels the third criterion's third requirement for the three-property exclusion, described above, with regard to credit terms. Specifically, consistent with TILA section 103(cc)(2)(E)(iv), the financing must have a fixed rate or an adjustable rate that is adjustable after five or more years, subject to reasonable annual and lifetime limitations on interest rate increases. Further, if the financing agreement has an adjustable rate, the rate must be determined by the addition of a margin to an index and be subject to reasonable rate adjustment limitations. In addition, the index on which the adjustable rate is based must be a widely available index such as indices for U.S. Treasury securities or LIBOR. The Bureau has also adopted comment 36(a)(5)–1 to provide the same safe harbors regarding adjustable rate financing as apply under the three-property exclusion as discussed above with respect to the one-property exclusion.

The Bureau believes that the one-property exclusion is appropriate because natural persons, estates, or trusts that may finance the sales of properties not more than once in a 12-month period (and perhaps only a few times in a lifetime) are not in a position to comply with all of the requirements of § 1026.43(c) or even the alternative criteria under the three-property exclusion discussed above in meeting the criterion in TILA section 103(cc)(2)(E)(iii). Accordingly, the Bureau believes this exclusion will help ensure that responsible, affordable seller financing remains available to consumers consistent with TILA section 129B(a)(1). Natural persons, trusts, and estates using this exclusion do not need to comply with the criteria in TILA section 103(cc)(2)(E) to be excluded from the definition of loan originator under § 1026.36(a)(1) as seller financers.

In creating the exclusion, the Bureau is relying on its authority under TILA section 105(a) to prescribe rules providing adjustments and exceptions necessary or proper to facilitate compliance with and effectuate the purposes of TILA. At the same time, to the extent the Bureau is imposing other criteria that are not in TILA section 103(cc)(2)(E) on natural persons, trusts, and estates using this exclusion, the Bureau is exercising its authority under TILA section 105(a) to impose additional requirements the Bureau determines are necessary or proper to effectuate the purposes of TILA or to facilitate compliance therewith. The Bureau also has authority to impose additional criteria under TILA section 103(cc)(2)(E)(v). The Bureau believes that any risk of consumer harm under the one-property exclusion is not appreciably greater than the risk under the three-property exclusion.

36(b) Scope

Scope of Transactions Covered by § 1026.36

This rulemaking implements new TILA sections 129B(b)(1) and (2) and (c)(1) and (2) and 129C(d) and (e), as added by sections 1402, 1403, and 1414(a) of the Dodd-Frank Act. TILA section 129B(b)(1) and (2) and (c)(1) and (2) requires that loan originators be ''qualified;'' that depository institutions maintain policies and procedures to ensure compliance with various requirements; restrictions on loan originator compensation; and restrictions on the payment of upfront discount points and origination points or fees with respect to ''residential mortgage loans.'' TILA section 129B(c)(2) applies to mortgage originators engaging in certain activities with respect to ''any mortgage loan'' but for reasons discussed above, the Bureau interprets TILA section 129B(c)(2) to only apply to residential mortgage loans. TILA section 103(cc)(5) defines a ''residential mortgage loan'' as ''any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling, other than a consumer credit transaction under an open end credit plan'' or a time share plan under 11 U.S.C. 101(53D). TILA section 129C(d) and (e) impose prohibitions on mandatory arbitration and single-premium credit insurance for residential mortgage loans or any extension of credit under an open-end consumer credit plan secured by the principal dwelling of the consumer.

The Bureau proposed to recodify § 1026.36(f) as § 1026.36(j) to accommodate new § 1026.36(f), (g), (h), and (i). The Bureau also proposed to amend § 1026.36(j) to reflect the scope of coverage for the proposals implementing TILA sections 129B (except for 129B(c)(3)) and 129C(d) and (e), as added by sections 1402, 1403, and 1414(a) of the Dodd-Frank Act, as discussed further below.

The proposal would have applied, in § 1026.36(h), the new prohibition on mandatory arbitration clauses, waivers of Federal claims, and related issues mandated by TILA section 129C(e) and, in § 1026.36(i), the new prohibition on financing single-premium credit insurance mandated by TILA section 129C(e) both to home equity lines of credit (HELOCs), as defined by § 1026.40, and closed-end credit transactions secured by the consumer's principal dwelling. In contrast, the proposal would have amended § 1026.36(j) to apply the new loan originator qualification and loan document identification requirements in TILA section 129B(b), as implemented in new § 1026.36(f) and (g), to closed-end consumer credit transactions secured by a dwelling (which is broader than the consumer's principal dwelling), but not to HELOCs. This scope of coverage would have been the same as the scope of transactions covered by § 1026.36(d) and (e) (governing loan originator compensation and the prohibition on steering), which coverage the proposal would not have amended. The proposal also would have made technical revisions to comment 36–1 to reflect these scope-of-coverage changes.

A mortgage broker association and several mortgage brokers and mortgage bankers submitted similar comments specifically stating that the Bureau should exempt all prime, traditional, and government credit products from the compensation regulations while retaining restrictions for high-cost and subprime mortgages. These commenters suggested that the exemption would eliminate any incentive for placing a prime qualified consumer in a high-cost mortgage for the purpose of greater financial gain.

A State housing finance authority submitted a comment requesting that the Bureau exempt products developed by and offered through housing finance agencies. The commenter stated that it developed credit products for at-or-below median income households and poorly served rural communities and assisted repairing and remediating code violations in urban centers. The commenter further stated that its products addressed unmet needs in the marketplace, including energy efficiency and repair credit, partnership credit programs with Habitat for Humanity, rehabilitation credit programs for manufactured housing, down-payment and closing cost assistance programs for first-time homebuyers, and employee assistance programs for affordable homes near work.[71]

The Bureau believes that in most cases exempting certain credit products would be contrary to the Dodd-Frank Act compensation restrictions that apply to all mortgage loans regardless of the product type or the social or economic goals advanced by the creditor or loan originator organization. Section 1026.36(d) applies to all closed-end consumer credit secured by a dwelling except for certain time share-secured transactions and does not make a distinction between whether a credit transaction is prime or subprime. The specific mortgage originator compensation restrictions and qualification requirements in TILA section 129B added by the Dodd-Frank Act do not specify different treatment on the basis of credit transaction type.[72] The Bureau believes that, regardless of the type of mortgage product being sold or its value to consumers, the policy of ensuring that the loan originator is qualified and trained is still relevant. The Bureau likewise believes that, regardless of the product type, consumers are entitled to protection from loan originators with conflicting interests and thus that the restrictions on compensating the loan originator based on transaction terms and on dual compensation are relevant across-the board. Accordingly, the Bureau declines to create distinctions between credit products in setting forth this rulemaking's scope of coverage.

The Bureau received a comment noting discrepancies among the supplementary information, regulation text, and commentary regarding § 1026.36(h) and (i). The Bureau is finalizing the scope provisions as proposed but adopting proposed § 1026.36(j) as § 1026.36(b) with the heading, ''Scope'' and providing in § 1026.36(b) and comment 36–1 (now redesignated comment 36(b)–1) that § 1026.36(h) and (i) also applies to closed-end consumer credit transactions secured by a dwelling. The Bureau believes that organizing the scope section after the definitions section in § 1026.36(a) and providing a heading will facilitate compliance by making the scope and coverage of the rule easier to discern. The Bureau notes that, to determine the scope of coverage for any particular substantive provision in § 1026.36, the applicable scope of coverage provision in § 1026.36(b), the scope of coverage in comment 36(b)–1, and the substantive regulatory provision itself must be read together. The Bureau's redesignation of comment 36–1 to comment 36(b)–1 should additionally facilitate compliance by making the scope and coverage of the rule easier to discern.

To the extent there is any uncertainty in TILA sections 129B (except for (c)(3)) and 129C(d) and (e) regarding which provisions apply to different types of transactions, the Bureau relies on its interpretive authority under TILA section 105(a).

Consumer Credit Transaction Secured by a Dwelling

Existing § 1026.36 applies the section's coverage to ''a consumer credit transaction secured by a dwelling.'' TILA section 129B uses the term ''residential mortgage loan'' for the purpose of determining the applicability of the provisions of this rulemaking. TILA section 103(cc)(5) defines a ''residential mortgage loan'' as ''any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling, other than a consumer credit transaction under an open end credit plan.'' The proposal would have continued to use ''consumer credit transaction secured by a dwelling'' and would not have adopted ''residential mortgage loan'' in § 1026.36.

Existing § 1026.2(a)(19) defines ''dwelling'' to mean ''a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.'' In the proposal, the Bureau explained that the definition of ''dwelling'' in § 1026.2(a)(19) was consistent with the meaning of dwelling in the definition of ''residential mortgage loan'' in TILA section 103(cc)(5). The Bureau proposed to interpret ''dwelling'' also to include dwellings in various stages of construction. Consumer credit to finance construction is often secured by dwellings in this fashion. The Bureau proposed to maintain this definition of dwelling.

The Bureau did not receive comment on its intention to continue to use consumer credit transaction secured by a dwelling or its interpretation of a dwelling. The Bureau continues to believe that changing the terminology of ''consumer credit transaction secured by a dwelling'' to ''residential mortgage loan'' is unnecessary because the same meaning would be preserved. Accordingly, the Bureau is adopting § 1026.36(b) as proposed.

36(d) Prohibited Payments to Loan Originators

Section 1026.36(d) contains the core restrictions on loan originator compensation in this final rule. Section 1026.36(d)(1) generally prohibits compensation based on the terms of the transaction, other than credit amount. This section is designed to address incentives that could cause a loan originator to steer consumers into particular credit products or features to increase the loan originator's own compensation. Section 1026.36(d)(2) generally prohibits loan originators from receiving compensation in connection with a transaction from both the consumer and other persons (dual compensation), and is designed to address potential consumer confusion about loan originator loyalty where a consumer pays an upfront fee but does not realize that the loan originator may also be compensated by the creditor. Each of these prohibitions is similar to one first enacted in the Board's 2010 Loan Originator Final Rule. Congress largely codified similar prohibitions in the Dodd-Frank Act, with some adjustments; this final rule reconciles certain differences between the statutory and regulatory provisions.

36(d)(1) Payments Based on a Term of a Transaction

As discussed earlier, section 1403 of the Dodd-Frank Act added new TILA section 129B(c). This new statutory provision builds on, but in some cases imposes new or different requirements than, the existing Regulation Z provisions restricting compensation based on credit terms established by the 2010 Loan Originator Final Rule.[73]

[71] The same commenter noted that HUD expressly exempted housing finance agencies from the SAFE Act based on HUD's finding that these agencies ''carry out housing finance programs * * * without the purpose of obtaining profit.'' The SAFE Act applies only to individuals who engage ''in the business of a loan originator.'' *See* 12 U.S.C. 1504(a). The Dodd-Frank Act does not similarly require a nexus to business activity.

[72] Moreover, the statement of Congressional findings in the Dodd-Frank Act accompanying the amendments to TILA that are the subject of this rulemaking supports the application of the rulemaking provisions to the prime mortgage market. Congress explained that it found ''that economic stabilization would be enhanced by the protection, limitation, and regulation of the terms of residential mortgage credit and the practices related to such credit, while ensuring that responsible, affordable mortgage credit remains available to consumers.'' Section 1402 of the Dodd-Frank Act (TILA section 129B(a)(1). This statement does not distinguish different types of credit products.

[73] The Board issued that final rule after passage of the Dodd-Frank Act, but acknowledged that a subsequent rulemaking would be necessary to

Currently, § 1026.36(d)(1)(i), which was added to Regulation Z by the 2010 Loan Originator Final Rule, provides that, in connection with a consumer credit transaction secured by a dwelling, ''no loan originator shall receive and no person shall pay to a loan originator, directly or indirectly, compensation in an amount that is based on any of the transaction's terms or conditions.'' [74] Section 1026.36(d)(1)(ii) states that the amount of credit extended is not deemed to be a transaction term or condition, provided that compensation received by or paid to a loan originator, directly or indirectly, is based on a fixed percentage of the amount of credit extended; the provision also states that such compensation may be subject to a minimum or maximum dollar amount. With certain adjustments, discussed below, the Dodd-Frank Act generally codifies these provisions in new TILA section 129B(c)(1). Specifically, new TILA section 129B(c)(1) provides that, ''[f]or any residential mortgage loan, no mortgage originator shall receive from any person and no person shall pay to a mortgage originator, directly or indirectly, compensation that varies based on the terms of the loan (other than the amount of the principal).'' 12 U.S.C. 1639b(c)(1).

In addition, Congress set forth ''rules of construction'' in new TILA section 129B(c)(4). This provision states, among other things, that nothing in section 129B(c) of TILA shall be construed as ''permitting yield spread premium or other similar compensation that would, for any residential mortgage loan, permit the total amount of direct and indirect compensation from all sources permitted to a mortgage originator to vary based on the terms of the loan (other than the amount of the principal).'' 12 U.S.C. 1639b(c)(4)(A).[75] This provision also states that nothing in TILA section 129B(c) prohibits incentive payments to a mortgage originator based on the number of residential mortgage loans originated within a specified period of time, which is generally consistent with the interpretation provided in existing comment 36(d)(1)–3.[76] 12 U.S.C. 1639b(c)(4)(D).

These provisions of new TILA section 129B(c) differ from the existing regulations in a key respect: they expand the scope of the restrictions on loan originator compensation from transactions in which any person other than the consumer pays the loan originator to *all* residential mortgage loans. Under the 2010 Loan Originator Final Rule, transactions in which the consumer pays compensation directly to a loan originator organization are not subject to the restrictions, so the amount of the compensation may be based on the terms and conditions of the transaction.

The proposal sought to implement new TILA section 129B by amending § 1026.36(d) to reflect the fact that the Dodd-Frank Act applies the ban on compensation based on terms to all residential mortgage loans and to further harmonize the existing regulation's language with the statute's language. The Bureau also took the opportunity to address a number of interpretive questions about the 2010 Loan Originator Final Rule that have been frequently raised by industry with both the Board and the Bureau.

36(d)(1)(i)

As noted above, section 1403 of the Dodd-Frank Act generally codifies the baseline rule in existing § 1026.36(d). As the Bureau described in the proposal, however, the new statutory provisions differ from the existing regulatory provisions in three primary respects. First, unlike existing § 1026.36(d)(1)(iii), the statute does not contain an exception to the general prohibition on varying compensation based on terms for transactions where the mortgage originator receives compensation directly from the consumer. Second, while existing § 1026.36(d)(1) prohibits compensation that is based on a transaction's ''terms or conditions,'' TILA section 129B(c)(1) refers only to compensation that varies based on ''terms.'' Third, existing § 1026.36(d)(1)(i) provides that the loan originator may not receive and no person shall pay compensation in an amount ''that is based on'' any of the transaction's terms or conditions, whereas TILA section 129B(c)(1) prohibits compensation that ''varies based on'' the terms of the loan.

Prohibition Against Payments Based on a Term of a Transaction

Existing § 1026.36(d)(1) provides that no loan originator shall receive and no person shall pay to a loan originator, directly or indirectly, compensation in an amount that is based on any of the transaction's terms or conditions. Similarly, new TILA section 129B(c)(1) prohibits mortgage originators from receiving or being paid, directly or indirectly, compensation that varies based on the terms of the transaction. However, neither TILA nor existing Regulation Z defines a transaction's terms.

The Board realized that the compensation prohibition in § 1026.36(d)(1) could be circumvented by compensating a loan originator based on a substitute factor that is not a transaction term or condition but effectively mimics a transaction term or condition. Existing comment 36(d)(1)–2 further clarifies that compensation based on a proxy for a term or condition of a transaction is also prohibited. The comment explains that compensation based on the consumer's credit score or similar representation of credit risk, such as the consumer's debt-to-income ratio is not one of the transaction's terms or conditions. However, if compensation varies in whole or in part with a factor that serves as a proxy for transaction terms or conditions, the compensation is deemed to be based on a transaction's terms or conditions.

The Board and the Bureau have each received numerous inquiries on whether compensation based on various specified factors would be compensation based on a proxy for a term or condition of a transaction and thus prohibited. Based on the volume of questions received about the existing compensation prohibition and the commentary concerning proxies, the Bureau recognized in the proposal that this issue had become a significant source of confusion and uncertainty. The Bureau responded by proposing to revise § 1026.36(d)(1)(i), comment 36(d)(1)–2, and related commentary to

implement TILA section 129B(c). *See* 75 FR 58509 (Sept. 24, 2010).

[74] In adopting this restriction, the Board noted that ''compensation payments based on a loan's terms or conditions create incentives for loan originators to provide consumers loans with higher interest rates or other less favorable terms, such as prepayment penalties.'' 75 FR 58509, 58520 (Sept. 24, 2010). The Board cited ''substantial evidence that compensation based on loan rate or other terms is commonplace throughout the mortgage industry, as reflected in Federal agency settlement orders, congressional hearings, studies, and public proceedings.'' *Id.* Among the Board's stated concerns was that ''creditor payments to brokers based on the interest rate give brokers an incentive to provide consumers loans with higher interest rates. Large numbers of consumers are simply not aware this incentive exists.'' 75 FR 58509, 58511 (Sept. 24, 2010). The Board adopted this prohibition based on its finding that compensating loan originators based on a loan's terms or conditions, other than the amount of credit extended, is an unfair practice that causes substantial injury to consumers. 75 FR 58509, 58520 (September 24, 2010). The Board stated that it was relying on authority under TILA section 129(l)(2) (since redesignated as section 129(p)(2)) to prohibit acts or practices in connection with mortgage loans that it finds to be unfair or deceptive. *Id.*

[75] Congress did not define ''yield spread premium.'' However, as discussed elsewhere in this notice, the Bureau is interpreting this term to mean compensation for loan originators that is calculated and paid as a premium above every $100 in principal.

[76] Existing comment 36(d)(1)–3 clarifies that the loan originator's overall loan volume delivered to the creditor is an example of permissible compensation for purposes of the regulation.

remove the term ''conditions'' and to clarify the meaning of proxy. Specifically, the proposal outlined a multi-stage analysis, starting first with a determination of whether a loan originator's compensation is ''based on'' a transaction's terms. If so, such compensation would generally violate § 1026.36(d)(1)(i). If not, the second inquiry is whether compensation is based on a proxy for a transaction's terms. The proposal would have subjected a factor to a two-part test to determine if it is a prohibited proxy for a loan term. First, whether the factor substantially correlates with a term or terms of the transaction is analyzed. Second, whether the loan originator can, directly or indirectly, add, drop, or change the factor when originating the transaction. The Bureau also specifically solicited comment on the issue of transaction terms and proxies, alternatives to the Bureau's proposal, and whether any action to revise the proxy concept and analysis would be helpful and appropriate. 77 FR at 55293.

As discussed further below, the Bureau is retaining this multi-stage analysis in the final rule, with additional clarifications, examples, and commentary based on the comments and additional analysis. In response to the comments received, however, the Bureau has recognized that two additions would provide useful clarification and facilitate compliance. Accordingly, the Bureau is not only finalizing the multi-stage proxy analysis, but amending the regulation to define what is a ''term of a transaction'' in the first instance and providing additional commentary listing several compensation methods that are expressly permitted under the statute and regulation without need for application of a proxy analysis. The Bureau believes that this additional clarification will significantly reduce uncertainty regarding permissible and impermissible compensation methods, while maintaining critical safeguards against evasion of the Dodd-Frank Act mandate.

Specifically, the final rule amends § 1026.36(d)(1)(i) to prohibit compensation based on ''a term of a transaction,'' amends § 1026.36(d)(1)(ii) to define that term to mean ''any right or obligation of the parties to a credit transaction,'' and makes conforming amendments to remove the term ''conditions'' from related regulatory text and commentary.

The Bureau is also amending comment 36(d)(1)–1.iii to provide further clarification of this definition. Under comment 36(d)(1)–1.iii, the Bureau interprets ''credit transaction'' as the operative acts (*e.g.,* the consumer's purchase of certain goods or services essential to the transaction) and written and oral agreements that, together, create the consumer's right to defer payment of debt or to incur debt and defer its payment. For the purposes of § 1026.36(d)(1)(ii), this means: (1) The rights and obligations, or part of any rights or obligations, memorialized in a promissory note or other credit contract, as well as the security interest created by a mortgage, deed of trust, or other security instrument, and in any document incorporated by reference in the note, contract, or security instrument; (2) the payment of any loan originator or creditor fees or charges imposed on the consumer, including any fees or charges financed through the interest rate; and (3) the payment of any fees or charges imposed on the consumer, including any fees or charges financed through the interest rate, for any product or service required to be obtained or performed as a condition of the extension of credit. The potential universe of fees and charges as described above that could be included in the definition of a term of a transaction is limited to any of those required to be disclosed in either or both the Good Faith Estimate and the HUD–1 (or HUD–1A) and subsequently in any TILA and RESPA integrated disclosures promulgated by the Bureau as required by the Dodd-Frank Act.

The Bureau believes the statutory text of TILA evidences a Congressional intent to define ''credit transaction'' within the definition of ''residential mortgage loan'' to include not only the note, security instrument and any document incorporated by reference into the note or security instrument but also any product or service required as a condition of the extension of credit. TILA section 129B(c)(1) prohibits compensation ''that varies based on the terms of the [residential mortgage] loan.'' TILA section 103(cc)(5) defines ''residential mortgage loan'' to mean ''any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling'' other than certain specified forms of credit. TILA section 103(f) defines ''credit'' as ''the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.'' In other words, any product or service the creditor requires the acquisition or performance of prior to granting the *right* to the consumer to defer payment of debt or to incur debt and defer its payment (*i.e.,* required as a condition of the extension of credit) is also included in the definition.

Moreover, express Congressional support for including any product or service required as a condition of the extension credit in the definition of a term of a transaction can be found in TILA section 103(cc)(2)(C) and (cc)(4). Both provisions contain this phrase: ''* * * loan terms (including rates, *fees, and other costs*)'' (emphasis added). The Bureau believes that fees and costs charged by the loan originator or creditor for the credit, or for a product or service provided by the loan originator or creditor related to the extension of that credit, impose additional costs on the consumer and thus are ''loan terms.'' The Bureau is not including other costs paid by the consumer as part of the overall transaction (*i.e.,* the Bureau is not including costs other than those required as a condition of the extension of credit in the definition), because such costs are not part of the ''credit transaction'' and thus are not a term of a ''residential mortgage loan.'' For example, costs not included in a term of a transaction for the purposes of the final rule could include charges for owner's title insurance or fees paid by a consumer to an attorney representing the consumer's interests.

Attempts to evade the prohibition on compensation based on a term of the transaction could be made by paying the loan originator based on whether a product or service has been purchased and not based on the amount of the fee or charge for it. The Bureau believes that payment based on whether the underlying product or service was purchased is equivalent to paying based on the existence of a fee or the charge. That is, payment based on either the amount of the fee or charge or the existence of a fee or charge would be payment based on a term of the transaction.

To reduce uncertainty and facilitate compliance, the Bureau is limiting the universe of potential fees or charges that could be included in the definition of a term of the transaction to any fees or charges required to be disclosed in either or both the Good Faith Estimate and the HUD–1 (or HUD–1A) (and subsequently in any TILA–RESPA integrated disclosure promulgated by the Bureau). Moreover, to facilitate compliance, the Bureau believes the fees or charges that meet the definition of a term of a transaction should be readily identifiable under an existing regulatory regime or a regime that loan originators and creditors will be complying with in the future (*i.e.,* the upcoming TILA–RESPA integrated disclosure regime). To the extent there is any uncertainty regarding the definition of ''loan terms'' or ''consumer credit transaction'' in TILA section 103(cc)(2)(C), (cc)(4), and (cc)(5), the Bureau relies on its interpretive authority and authority to prevent circumvention or evasion and facilitate compliance under TILA section 105(a).

Thus, any provision or part of a provision included in the note or the security instrument or any document incorporated by reference that creates any right or obligation of the consumer or the creditor effectively is a term of the transaction. For example, the consumer's promise to pay interest at a yearly rate of X percent is a term of the transaction. The rate itself is also a term of the transaction. The existence of a prepayment penalty or the specific provision or part of the provision describing the prepayment penalty in the note additionally is a term of the transaction.

Any provision set forth in riders to the note or security instrument such as covenants creating rights or obligations in an adjustable rate rider, planned unit development, second home, manufactured home, or condominium rider are also included. For example, a provision in a condominium rider requiring the consumer to perform all of the consumer's obligations under the condominium project's constituent documents is a term of a transaction. The name of the planned unit development is also a term of the transaction if it is part of the creditor's right described in the planned unit development rider to secure performance of the consumer's promise to pay.

Any loan originator or creditor fee or charge imposed on the consumer for the credit or for a product or service provided by the loan originator or creditor that is related to the extension of that credit, including any fee or charge financed through the interest rate, is a term of a transaction. Thus, points, discount points, document fees, origination fees, and mortgage broker fees imposed on consumers are terms of a transaction. Also, if a creditor performs the appraisal or a second appraisal, and charges an appraisal fee, the appraisal fee is a term of the transaction regardless of whether it is required as a condition of the extension of credit if the appraisal is related to the credit transaction (*i.e.,* the appraisal is for the dwelling that secures the credit). Fees and charges for goods obtained or services performed by the loan originator or creditor in a ''no cost'' loan where the fees and charges are financed through the interest rate instead of paid directly by the consumer at closing are also terms of the transaction.

Moreover, any fees or charges for any product or service required to be obtained or performed as a condition of the extension of credit are also terms of a transaction. For example, creditors often require consumers to purchase hazard insurance or a creditor's title insurance policy. The amount charged for the insurance or the purchase of the underlying insurance policy itself is a term of the transaction if the policy is required as a condition of the extension of credit.

Comment 36(d)(1)–2 explains that, among other things, the interest rate, annual percentage rate, collateral type (*e.g.,* condominium, cooperative, detached home, or manufactured housing), and the existence of a prepayment penalty are terms of a transaction for purposes of § 1026.26(d)(1). As discussed below, this comment also provides interpretations about permissible compensation factors that are neither terms of a transaction nor proxies for such terms under § 1026.36(d)(1).

The Bureau recognizes that, under § 1026.36(d)(1), a term of a transaction could also include, for example, creditor requirements that a consumer pay a recording fee for the county recording certain credit transaction documents, maintain an escrow account, or pay any upfront fee or charge as a condition of the extension of credit. Thus, the requirement for a consumer to pay recording fees or taxes to the county for the recording service as a condition of the extension of credit would be considered a term of a transaction. But, as with many other terms of the transaction, the requirement to pay recording taxes under this scenario would not likely present a risk of violating the prohibition against compensation based on a term of a transaction because a person typically would not compensate a loan originator based on whether the consumer paid recording taxes to the county.

As noted above, compensation paid to a loan originator organization directly by a consumer *(i.e.,* mortgage broker fees imposed on the consumer) is a term of a transaction under § 1026.36(d)(1)(ii). As a result, the Bureau is concerned that § 1026.36(d)(1) could be read to prohibit a loan originator organization from receiving compensation directly from a consumer in all cases because that compensation would necessarily be based on itself, and thus, based on a transaction term. The Bureau believes that Congress did not intend that the prohibition in TILA section 129B(c)(1) on compensation being paid based on the terms of the loan to prevent loan originator organizations from receiving compensation directly from a consumer in all cases. In fact, TILA section 129B(c)(2) specifically contemplates transactions where loan originators would receive compensation directly from the consumer.[77] Thus, the final rule amends comment 36(d)(1)–2 to clarify that compensation paid to a loan originator organization directly by a consumer in a transaction is not prohibited by § 1026.36(d)(1) simply because that compensation itself is a term of the transaction. Nonetheless, that compensation may not be based on any other term of the transaction or a proxy for any other term of the transaction. In addition, in a transaction where a loan originator organization is paid compensation directly by a consumer, compensation paid by the loan originator organization to individual loan originators is not prohibited by 1026.36(d)(1) simply because it is based on the amount of compensation paid directly by the consumer to the loan originator organization but the compensation to the individual loan originator may not be based on any other term of the transaction or proxy for any other term of the transaction.

Prohibition Against Payment Based on a Factor That Is a Proxy for a Term of a Transaction

In the 2010 Loan Originator Final Rule, the Board adopted comment 36(d)(1)–2, which explains how the prohibition on compensation based on a transaction's terms is also violated when compensation is based on a factor that is a proxy for a term of a transaction. As an example, the comment notes that a consumer's credit score or similar representation of credit risk, such as the consumer's debt-to-income ratio, is not one of the transaction's terms or

[77] Specifically, TILA section 129B(c)(2)(A) states that, for any mortgage loan, a mortgage originator generally may not receive from any person other than the consumer any origination fee or charge except bona fide third-party charges not retained by the creditor, mortgage originator, or an affiliate of either. Likewise, no person, other than the consumer, who knows or has reason to know that a consumer has directly compensated or will directly compensate a mortgage originator, may pay a mortgage originator any origination fee or charge except bona fide third-party charges as described above. Notwithstanding this general prohibition on payments of any origination fee or charge to a mortgage originator by a person other than the consumer, however, TILA section 129B(c)(2)(B) provides that a mortgage originator may receive from a person other than the consumer an origination fee or charge, and a person other than the consumer may pay a mortgage originator an origination fee or charge, if, among other things, the mortgage originator does not receive any compensation directly from the consumer.

conditions. The comment goes on to clarify, however, that if a loan originator's compensation varies in whole or in part with a factor that serves as a proxy for loan terms or conditions, then the originator's compensation is based on a transaction's terms or conditions. The comment also provides an example of payments based on credit score that would violate existing § 1026.36(d)(1). As previously discussed, the Board realized the compensation prohibition in § 1026.36(d)(1) could be circumvented by compensating a loan originator based on a substitute factor that is not a transaction term or condition but effectively mimics a transaction term or condition.

Since the Board's 2010 Loan Originator Final Rule was promulgated, the Board and the Bureau have received numerous inquiries on the commentary regarding proxies and whether particular loan originator compensation practices would be prohibited because they set compensation based on factors that are proxies for transaction terms. Small entity representatives providing input during the Small Business Review Panel process also urged the Bureau to use this rulemaking to clarify this issue. While some industry stakeholders sought guidance or approval of particular compensation practices, the Bureau also learned through its outreach that a number of creditors felt that the existing proxy commentary was appropriate and should not in any event be made more permissive. Some of these institutions explained that they had always paid their loan originators the same commission—*i.e.,* percentage of the amount of credit extended—regardless of type or terms of the transactions originated. In their opinion, changes in the Bureau's approach to proxies would allow unscrupulous loan originators to employ compensation practices that would violate the principles of the prohibition against compensation based on a transaction's terms.

Based on this feedback and its own analysis, the Bureau proposed revisions to § 1026.36(d)(1)(i) and comment 36(d)(1)–2.i to clarify how to determine whether a factor is a proxy for a transaction's term to facilitate compliance and prevent circumvention. The proposal's amendments to § 1026.36(d)(1)(i) would have clarified in regulatory text that compensation based on a proxy for a transaction's terms would be prohibited. In addition, the proposed clarification in § 1026.36(d)(1)(i) and comment 36(d)(1)–2.i would have provided that a factor (that is not itself a term of a transaction originated by the loan originator) is a proxy for the transaction's terms if two conditions were satisfied: (1) The factor substantially correlates with a term or terms of the transaction; and (2) the loan originator can, directly or indirectly, add, drop, or change the factor when originating the transaction.[78]

As proposed, both prongs of the proxy analysis would have to be met for a factor to be a proxy. If the factor substantially correlates with a term of a transaction originated by the loan originator, then the factor would be a proxy only if the loan originator could, directly or indirectly, add, drop, or change the factor when originating the transaction. In the supplementary information to the proposal, the Bureau noted that where a loan originator had no or minimal ability directly or indirectly to add, drop, or change a factor, that factor would not be a proxy for the transaction's terms because the loan originator would not be able to steer consumers based on that factor.

The Bureau also proposed to delete the example of credit score as a proxy for a transaction's terms or conditions in existing comment 36(d)(1)–2. The proposal explained that this example created uncertainty for creditors and loan originators and did not adequately reflect the Bureau's proposed treatment of proxies. Under the proposal, a credit score may or may not be a proxy for a term of a transaction depending on the facts and circumstances. Similarly, the proposal would have removed the example stating that loan-to-value ratio would not be a term of a transaction to conform to other aspects of the proposal.

Instead, proposed comment 36(d)(1)–2.i, provided three new examples to illustrate use of the proposed proxy standard and to facilitate compliance with the rule.

The Bureau proposed to add comment 36(d)(1)–2.i.A to provide an example of the application of the proposed proxy definition to address whether compensation based on a loan originator's employment tenure would be considered a proxy for a transaction term under the proposed definition. The proposal explained that this factor would likely not meet the first prong of the proposed proxy definition because employment tenure would likely have little correlation with a transaction's term and thus not be "substantially correlated" to a term of a transaction.

The Bureau proposed to add comment 36(d)(1)–2.i.B to provide an example of the application of the proposed proxy definition to address whether compensation to a loan originator based on whether an extension of credit would be held in portfolio or sold into the secondary market would be considered a factor that is a proxy for a transaction term under the proposed definition. The example assumed an extension of credit would be held in portfolio or sold into the secondary market depending in large part on whether it had a five-year balloon feature or a 30-year term. Thus, the factor would meet the first prong of the proxy definition because whether an extension of credit would be held in portfolio or would be sold into the secondary market would substantially correlate with one or more transaction terms (*i.e.,* interest rate, term). The loan originator in the example may be able to change the factor indirectly by steering the consumer to choose the five-year balloon or the 30-year term. Thus, whether an extension of credit is held in portfolio or sold into the secondary market would be a proxy for a transaction's terms under these particular facts and circumstances.

The Bureau proposed to add comment 36(d)(1)–2.i.C to provide an example of the application of the proposed proxy definition to whether compensation to a loan originator based on the geographic location of the property securing a refinancing would be considered a proxy for a transaction term. In the example, the loan originator would be paid a higher commission for refinancings secured by property in State A than in State B. The first prong of the proxy definition would be satisfied because, under the facts assumed in the example, refinancings secured by property in State A would have lower interest rates than credit transactions secured by property in State B; thus, the property's location would substantially correlate with a term of a transaction (*i.e.,* the interest rate). However, the second prong of the proxy definition would not be satisfied because the loan originator would not be able to change the presence or absence of the factor (*i.e.,* whether the

[78] As discussed in the proposal, the Bureau specifically sought input during the Small Business Review Panel process on clarifying the rule's application to proxies. The proxy proposal under consideration presented to the small entity representatives during the Small Business Review Panel process stated that "a factor is a proxy if: (1) It substantially correlates with a term of a transaction; and (2) the MLO has discretion to use the factor to present credit to the consumer with more costly or less advantageous term(s) than term(s) of other credit available through the MLO for which the consumer likely qualifies." Upon further consideration, the Bureau believed the proxy proposal contained in the proposed rule would be easier to apply uniformly and would better addresses cases where the loan originator does not "use" the factor than the specific proposal presented to the Small Business Review Panel.

refinancing is secured by property in State A or State B). Thus, geographic location, under the particular facts assumed in the example, would have not been considered a proxy for a transaction's term.

The Bureau believed that the proposed changes would simplify and reduce uncertainty regarding the proxy analysis and, more generally, would align the treatment of proxies with the principles underlying the prohibition on compensation based on a transaction's terms. The Bureau solicited comment on the proposal, alternatives the Bureau should consider, and whether any action to revise the proxy concept and analysis would be helpful and appropriate. The Bureau also invited specific comment on two aspects of the first prong of the proxy definition: (1) Whether ''substantially'' was sufficient to explain the degree of correlation necessary under the proxy definition and, if not, what other term should be considered; and (2) how ''correlation'' to a term should be determined.

Many industry commenters opposed the Bureau's proposed amendments to the proxy analysis and requested that the existing analysis be removed. Other commenters supported the Bureau's efforts to clarify the proxy analysis but criticized the proposed standard or requested additional guidance.

A large bank, a few lender trade groups, and a number of credit unions and credit union leagues commented that the prohibition against compensation based on transaction terms in the Dodd-Frank Act was sufficient to protect consumers without the proxy concept. Many of these commenters also stated that the Dodd-Frank Act prohibition on compensation based on transaction terms was very clear and did not include the concept of a proxy analysis. These commenters further stated that inclusion of the proxy definition in the rule would impose a compliance burden that was not mandated by statute. Some of these commenters also indicated that the Bureau's approach to proxies created ambiguities that would make compliance difficult, which was particularly problematic given the significant liability that TILA would impose for non-compliance.

Another industry trade group stated that, instead of addressing proxies, the Dodd-Frank Act expressly addressed steering and related conduct. Therefore, it urged the Bureau to abandon the proxy concept and focus instead on implementing clear guidance for the anti-steering provisions in the Dodd-Frank Act. One credit union also stated that the final rule should clarify that incentive arrangements adopted pursuant to NCUA regulations would be permissible under Regulation Z.

One large national bank and an industry trade group criticized the proxy concept in the existing rule for presuming the existence of a proxy whenever a difference in transaction terms was correlated with a difference in compensation and the difference in compensation could not otherwise be justified on a permissible basis. One credit union league commenter stated that the Bureau's proposed changes would not reduce uncertainty and help simplify application of the prohibition of compensation based on transaction terms and urged the Bureau to refrain from amending the existing regulation and commentary. Several commenters stated that instead of, or in addition to, providing further clarification and a definition of proxies, the final rule should simply: (1) Permit differences in compensation based on cost differences among products; (2) allow differences in compensation to incentivize the offering of socially beneficial credit products such as state agency or Community Reinvestment Act loans; and (3) contain an inclusive list of proxies and exceptions.

Several large industry groups, several large creditors, several State industry associations, and a credit union league made comments that were generally supportive of the Bureau's efforts to clarify the existing approach to proxies, but requested that the Bureau offer a more precise definition of the term ''proxy.'' Some of these commenters stated that ''substantially correlates with a term or terms of a transaction'' was too speculative and subjective or required more explanation. One large bank commenter stated that the proposed two-pronged proxy definition would increase rather than reduce confusion. Despite the opposition to the proposed proxy definition voiced by the many commenters, there were no comments providing specific alternatives to the proposal's formulation.

With respect to the Bureau's proposed revisions to discussion in comment 36(d)(1)–2, most of the larger trade groups representing creditors ranging from community banks to the largest banks agreed that credit score should not be considered a proxy for a transaction term. These commenters noted that loan originators have no discretion or influence over the credit score even though the score influences the secondary market value of the extension of credit. One large national bank commenter, however, was concerned that, by not characterizing a credit score as a proxy for transaction terms, the proposal would permit creditors to compensate loan originators more for credit extended to consumers with high credit scores. Credit scores, the bank noted, invariably correlate with a credit transaction's interest rate. In this commenter's view, certain factors that correlate with a transaction's terms should not be the basis of differences in compensation. This commenter also stated that debt-to-income ratio and the collateral's loan-to-value ratios were common factors that affect the interest rate and could typically be modified by a loan originator, thus implying these factors too should be considered proxies for a transaction's terms but may not be under the proposal.

While the Bureau believes that the new definition of a ''term of a transaction'' in § 1026.26(d)(1)(ii) will help clarify the permissibility of varying compensation based upon many of the factors that commenters raised questions about, there will still be factors that would not meet this definition and thus be subject to the analysis under the proxy definition. Accordingly, the Bureau has revised the proposed proxy definition in the final rule, while preserving the proposal's basic approach. By prohibiting compensation based on a factor that serves as a proxy for a term of a transaction, the Bureau believes that it is within its specific authority under TILA section 105(a) to issue regulations to effectuate the purposes and prevent evasion or circumvention of TILA. A contrary approach would create an enormous loophole if persons were able to identify factors to base loan originator compensation on that, although not considered transaction terms, act in concert with particular terms. For example, many loan level price adjustments are not transaction terms per se, however, they often directly impact the price investors are willing to pay for a loan. Restated differently, the amount investors are willing to pay now for a stream of payments made by consumers in the future is highly dependent on the interest rate of the note. To the extent a loan originator is able to manipulate such factors the more attractive they become as a proxy for transaction terms upon which to base compensation. The Bureau further believes that by providing a proxy definition, the Bureau is also acting pursuant to its authority under TILA section 105(a) to facilitate compliance with TILA.

Revised § 1026.36(d)(1)(i) provides that ''[a] factor that is not itself a term of a transaction is a proxy for a term of a transaction if the factor consistently varies with a term over a significant number of transactions, and the loan originator has the ability, directly or indirectly, to add, drop, or change the factor in originating the transaction.'' The final proxy definition revises the proposed definition in two ways: (1) Under the first prong, a factor is analyzed by reference to whether it ''consistently varies with a term over a significant number of transactions'' instead of whether it ''substantially correlates with a term''; and (2) under the second prong, the analysis focuses on whether the loan originator ''has the ability to'' manipulate the factor rather than whether a loan originator ''can'' manipulate the factor. The Bureau also maintains in the final rule two of the three examples of the application of the proxy analysis to specific compensation and fact patterns. However, the proxy examples have been renumbered given the removal of the example in comment 36(d)(1)–2.i.A. The example proposed in comment 36(d)(1)–2.i.A. analyzed a hypothetical situation involving a creditor that increased loan originator compensation based on the loan originator's tenure with the creditor. The final rule orients the focus of the proxy analysis on factors substituted for a term of the transaction. This example involved facts that were unrelated to this analysis and is not included in the final rule to reduce confusion and facilitate compliance. The remaining examples are located in comment 36(d)(1)–2.ii instead of comment 36(d)(1)–2.i to accommodate a reorganization of the comments to facilitate compliance. The terminology in these examples has additionally been revised to reflect changes to the definitions of a ''term of a transaction'' and ''proxy'' in the final rule.

As stated above, the final rule revises the first prong of the proxy definition from the proposed ''substantially correlates with a term'' to ''consistently varies with a term over a significant number of transactions.'' First, the change is meant to avoid use of the word ''correlates,'' which is given many conflicting technical meanings. Second, the inclusion of ''over a significant number of transactions'' is meant to explain that the nexus between the factor and a term of a transaction should be established over a sample set that is sufficiently large to ensure confidence that the variation is indeed consistent. Third, the emphasis on consistent variation with a term, over a significant number of transactions, like the use of correlation as proposed, is intended to make clear that there is no need to establish causation to satisfy the first prong. Finally, the consistent variation between the factor and term may be positive or negative.

The Bureau has also made a minor change to the proposed second prong of the definition. The final rule replaces ''can'' with ''has the ability'' to emphasize that the loan originator must have substantive and not conjectural capacity to add, drop, or change the factor. That is, the ability to influence the factor must be actual rather than just hypothetical.

The Bureau believes that the new definition for a ''term of a transaction'' and the revision to the proxy definition should help clarify whether a particular factor is a term of a transaction in the first place or is a proxy for a term of a transaction. To create further clarity, the Bureau is providing additional interpretation and examples on how the two definitions function together when applied to an analysis of the permissibility of compensating loan originators by reference to some of the numerous factors identified by commenters. Because the analysis of whether a factor upon which a loan originator would be compensated is a proxy is often dependent on particular facts, care should be taken before concluding that the Bureau has sanctioned any particular compensation factor in all circumstances.

For example, the Bureau believes that compensation based on which census tract, county, state, or region of the country the property securing a credit transaction is located generally is not a term of a transaction. However, the geographic factors compensation is based on, that is the census tract, county, state, or region of the country, would be subject to analysis under the proxy definition.[79] Location within a broad geographic unit is unlikely to be deemed a proxy for a term of a transaction. The factor must satisfy both prongs of the definition to be considered a proxy. Loan originators have no ability to change the location of property that a consumer purchases. Thus, absent very unusual circumstances, the second prong and thus the larger test would not be satisfied. Thus, the geographic location in this example would not be considered a proxy for a term of a transaction.

For similar reasons, compensation based on whether a consumer is a low-to moderate-income borrower would also typically be neither compensation based on a term of a transaction nor compensation based on a proxy for a term of a transaction. First, whether a consumer is a low-to moderate-income borrower would typically not be a term of a transaction. Income level is not a right or obligation of the agreement. Moreover, income level is not a fee or charge. The determination of whether a particular consumer fits the definition of a low-to moderate-income borrower would depend on that consumer's income and the definition of low-to moderate-income pursuant to applicable government standards. With regard to the proxy text, credit extended to low-to moderate-income borrowers may tend to consistently have certain pricing or product features, but because a loan originator is typically unable to change whether a consumer is classified as a low-to moderate-income borrower, compensating based on this factor would not satisfy the second prong of the definition of a proxy.

Depending on the particular facts and circumstances, compensation based on a consumer's debt-to-income or loan-to-value ratio, although not typically a term of a transaction, could be considered compensation based on a proxy for a term of a transaction. Debt-to-income and loan-to-value ratios are not typically transaction terms. Applying the first prong of the proxy definition, these factors could consistently vary, over a significant number of transactions, with a term of a transaction such as the interest rate. Depending on the particular facts and circumstances, if either of these factors does meet the first prong, the factors could meet the second prong of the proxy definition because a loan originator could have the ability to alter these factors by encouraging consumers to take out larger or smaller amounts of credit.[80]

A diverse variety of industry commenters requested guidance on whether compensation based on variations in the amount of credit extended for different products, such as differentially compensating loan originators for jumbo loans, conventional loans, and credit extended pursuant to government programs for low-to moderate-income borrowers (which typically have smaller amounts of credit extended and smaller profit margins) would be prohibited as compensation based on a proxy for a term of a transaction. Commenters explained that loan originators paid as a percentage of the amount of credit

[79] The analysis would be different if, under specific facts and circumstances, geographic location were otherwise incorporated into the agreements that together constitute the credit transaction in a way that would satisfy the definition of a term of the transaction.

[80] Section 1026.36(d)(1)(ii) expressly permits compensation based on the amount of credit extended, but does not permit compensation based on the amount of credit extended combined with another factor.

extended are de-incentivized to extend credit to low-to moderate-income consumers because these consumers usually take out smaller amounts of credit. Commenters also stated that creditors cap the percentage of the amount of credit extended they are willing to pay loan originators for originating jumbo loans.

This issue is not properly a question that implicates a proxy analysis, but instead a question of the breadth of the exclusion of compensation based on a term of a transaction in § 1026.36(d)(1)(ii) for compensation based on the amount of credit extended. To the extent that commenters are asking whether it is permissible to compensate loan originators on the actual size of the amount of credit extended using a fixed percentage of credit extended as a factor, this is clearly permitted by § 1026.36(d)(1)(ii). On the other hand, § 1026.36(d)(1)(ii) does not permit loan originators to be compensated on a percentage that itself varies based on the amount of credit extended for a particular transaction. For example, existing comment 36(d)(1)–9 prohibits payment to a loan originator compensation that is 1.0 percent of the amount of credit extended for credit transactions of $300,000 or more, 2.0 percent for credit transactions between $200,000 and $300,000 and 3.0 percent on credit transactions of $200,000 or less.[81] Existing § 1026.36(d)(1)(ii) and comment 36(d)(1)–9, however, also provide a permissible method by which a floor or ceiling may be placed on a particular loan originator's compensation on a per transaction basis. For example, a creditor may offer a loan originator 1.0 percent of the amount of credit extended for all credit transactions the originator arranges for the creditor, but not less than $1,000 or greater than $5,000 for each credit transaction.[82]

A mix of commenters requested clarification on whether compensation can vary based on the geographic location of the individual loan originator instead of the property so that for instance individual loan originators located in a high cost of living area are paid a higher fixed percentage of the amount of credit extended relative to individual loan originators located in lower cost areas. The existing rule does not apply to differences in compensation between different individual loan originators. The rule applies to the compensation received by a particular individual loan originator. For example, this rule does not prohibit a particular individual loan originator located in New York City from receiving compensation based on a higher percentage of the amount of credit extended than a loan originator located in Knoxville, Tennessee. The final rule does not change the existing rule in this respect.

A diverse group of commenters also requested clarification on whether compensation based on whether an extension of credit held in portfolio or sold into the secondary market would be considered compensation based on transaction terms. The Bureau finalizes as comment 36(d)(1)–2.ii.A the proposed example, described above, that discusses how, in specific circumstances presented in the example, compensation based on whether an extension of credit is held in portfolio or sold into the secondary market would violate § 1026.36(d)(1). Under the example, whether the extensions of credit were held in portfolio was a factor that consistently varied with transaction terms over a significant number of transactions (*i.e.,* five-year term with a final balloon payment or a 30-year term). In the example, the loan originator also had the ability to encourage consumers to choose extensions of credit that were either held in portfolio or sold in the secondary market by steering them to terms that corresponded to their future status, *e.g.,* the five-year term transactions were destined for portfolio. Thus, whether compensation could vary based on these factors as described above without violating § 1026.36(d)(1) depends on the particular facts and circumstances.[83]

Permissible Methods of Compensation

To reduce further regulatory uncertainty surrounding the interplay between a term of a transaction and a proxy for a term of a transaction and in response to commenters' inquiries implicating the scope of the comment's examples, the final rule revises the content of existing comment 36(d)(1)–3 and moves that content to comment 36(d)(1)–2.i for organizational purposes. Existing comment 36(d)(1)–3 provides nine ''illustrative examples of compensation methods that are permissible'' and are ''not based on the transaction's terms or conditions.'' The final rule removes two of the examples, clarifies the scope of several others, and clarifies that the revised and remaining examples are not subject to a proxy analysis.

Existing comment 36(d)(1)–3 declares compensation based on the following methods permissible: ''loan originator's overall loan volume * * * delivered to the creditor''; ''the long-term performance of the originator's loans''; ''[a]n hourly rate of pay to compensate the originator for the actual number of hours worked''; ''[w]hether the consumer is an existing customer of the creditor or a new customer''; a ''payment that is fixed in advance for every loan the originator arranges for the creditor''; the ''percentage of applications submitted by the loan originator to the creditor that results in consummated transactions''; ''the quality of the loan originator's loan files (*e.g.,* accuracy and completeness of the loan documentation) submitted to the creditor''; a ''legitimate business expense, such as fixed overhead costs''; and ''the amount of credit extended, as permitted by § 1026.36(d)(1)(ii).''

The 2010 Loan Originator Final Rule did not explicitly address whether these examples should be subject to a proxy analysis. Nonetheless, the Board strongly implied that compensation based on these factors would not be compensation based on a proxy for transaction terms or conditions by referring to them as ''permissible'' methods. The Bureau believes that compensation based on these methods is not compensation based on a term of a transaction under § 1026.36(d)(1)(ii) and should not be subjected to the proxy analysis. Because the final rule further develops the proxy concept and places it in regulatory text, the Bureau is revising the list to clarify that these are still permissible bases of compensation.[84]

[81] Existing comment 36(d)(1)–9 is consistent with the Bureau's interpretation of TILA section 129B(c). To the extent there is any uncertainty in the statute regarding whether loan originators are prohibited from being compensated based on a percentage of the loan that itself varies based on the amount of credit extended for a particular transaction, the Bureau relies on its interpretive authority under TILA section 105(a) to effectuate the purposes of TILA, prevent circumvention or evasion, and facilitate compliance therewith.

[82] As discussed above, it is also not permissible to differentiate compensation based on credit product type, since products are simply a bundle of particular terms.

[83] Commenters also requested clarification on whether compensation could vary based on whether an extension of credit was originated in wholesale or retail channels or whether credit was extended by a bank or the bank brokered the extension of credit to another creditor. Assuming that there was consistent variation between these factors and transaction terms, the analysis would depend on whether a loan originator could be deemed to vary the channel or control the creditor's role in the transaction.

[84] In addition, the Bureau has removed the language stating that the list is not exhaustive. The Bureau believes there are factors not in the list that would also not meet the definition of a term of the transaction. These factors would be subject to analysis under the proxy definition, however.

The Bureau recognizes that there are few ways to compensate loan originators under this rule that are not subject to proxy analysis. The Bureau further acknowledges that some institutions will not want to subject factors to the proxy definition to determine if they may be permissible because of the fact-dependent nature of the analysis. The Bureau believes it is important to allow persons to compensate loan originators based on factors that the Bureau considers to be neither a term of the transaction nor a proxy for a term of the transaction. The Bureau believes that, although some of the compensation methods may give rise to negligible steering incentives, the benefits of allowing a person to compensate under these methodologies outweigh any such potential steering incentives. For example, periodically setting compensation levels (*i.e.,* commissions) for loan originators based on the quality of loan files or long term performance of the credit transactions the loan originator has arranged should encourage behavior that benefits consumers and industry alike. The Bureau believes that providing this list of compliant factors will facilitate compliance with the rule.

The final rule list deletes the last example that allows for compensation based on the amount of credit extended. The Bureau believes that this example is unnecessary because, as the example itself notes, this exception is expressly set forth in § 1026.36(d)(1)(ii). Moreover, the corollary to ''amount of credit extended'' is embodied in the first example on the list that permits compensation based on the loan originator's overall loan volume, which is further explained as either the ''total dollar amount of credit extended or total number of loans originated.'' The Bureau has moved the regulatory cross-reference to the first example.

The Bureau has also removed the existing example that permits a loan originator to be compensated based on a legitimate business expense, such as fixed overhead costs. The Bureau has understood that the example applies to loan originator organizations (which incur business expenses such as fixed overhead costs) and not to individual loan originators. An example of the application of this exception would be a loan originator organization that has a branch in New York City and another in Oklahoma. The loan originator organization would be able to receive compensation from a creditor pursuant to a formula that reflects the additional overhead costs of maintaining an office in New York City. While the Bureau believes that this practice would normally not constitute compensation based on a term of a transaction given the definition adopted in this final rule, the final rule removes this example because the Bureau does not believe that this method of compensation should be insulated from a proxy analysis in every instance. The Bureau is concerned that under certain circumstances, differential compensation for corporate loan origination organization branches from creditors could create steering incentives that violate § 1026.36(e). For example, loan originators working in a call center for the loan originator organization with the two branches described above could be incentivized to steer a consumer to the New York City branch that only offers subprime credit (and receives the most compensation per transaction from the creditor based on the additional overhead costs) to increase the amount of compensation the loan originator organization would receive.

Many commenters, including large industry associations, questioned the extent of protection offered by existing comment 36(d)(1)–3.iii, which provides that an hourly rate of pay to compensate the originator for the actual number of hours worked is not compensation based on transaction terms. Commenters asked whether an employer would be permitted under the comment to create commissions for specific credit products based on the estimated typical hours needed to originate or process the product. Commenters explained that the ability to set a commission based on estimated hours instead of actual hours worked would eliminate costs that would otherwise be expended on tracking and documenting the actual time spent on originating each particular credit transaction.[85]

During outreach before the proposal, the Bureau learned that historically loan originators and processers generally spend more time on certain credit products. The outreach participants also noted, however, that in the current market there is no consistent variation in the typical time needed to originate or process different credit products, such as an FHA loan or nonconventional loan versus a conventional loan. These participants explained that stricter underwriting requirements have caused many conventional loans to take as long as, or longer than, FHA loans or other government program credit products. For example, participants noted that processing conventional loans for consumers with a higher net worth but little income or a higher income with large amounts of debt often take longer than processing FHA or other nonconventional loans for low-to moderate-income consumers.

Permitting a creditor or loan originator organization to establish different levels of compensation for different types of products would create precisely the type of risk of steering that the Act seeks to avoid unless the compensation were so carefully calibrated to the level of work required as to make the loan originators more-or-less indifferent as to whether they originated a product with a higher or lower commission. The Bureau believes, however, that periodic changes in the market and underwriting requirements and changing or unique consumer characteristics would likely lead to inaccurate estimates for the time a specific credit product takes to originate and thus lead to compensation structures that create steering incentives. The Bureau further believes that the accuracy of the estimates would be difficult to verify without recording the actual number of hours worked on particular credit products anyway. The Bureau believes that this information would be necessary not only to set the estimate initially but also to calibrate the estimate as market conditions and consumer characteristics rapidly evolve and to correct inaccuracies. The Bureau believes that the potential for inaccuracy or deliberate abuse and burdens of remedying and tracking inaccurate estimates outweighs any benefit gained by permitting estimates of the actual hours worked. These types of estimates are not currently covered by the exemption in comment 36(d)(1)–3.iii, and the Bureau is not amending the comment to permit them.[86]

To provide further clarification the Bureau notes that certain ''permissible methods of compensation'' specifically allow compensation methods to be calculated with reference to and applied to a specific transaction while others allow for compensation methods to be calculated with reference to and applied to multiple transactions. For example, the permissible methods of compensation in comment 36(d)(1)–2.i.A (compensation adjustment for total

[85] The comment from the industry groups urged the Bureau ''to clarify that if a creditor or broker makes a good faith determination of the time and effort to process a loan based upon the loan product or process, then it may use that information to vary loan originator compensation by product or process.''

[86] If a loan originator's compensation was calculated on an estimate of hours worked for a specific product, or by any other methodology to determine time worked other than accounting for actual hours worked, the methodology would be permissible only if it did not meet the definition of a proxy (and complied with other applicable laws).

dollar amount or total number of transactions), B (long term performance), E (adjustment after certain number of transactions), F (the percentage of applications that result in consummated transactions), and G (quality of the loan files submitted to the creditor) permit compensation adjustments to be calculated with reference to and applied to multiple transactions. The other permissible methods of compensation in comment 36(d)(1)–2.i.C (hourly rate of pay) and D (existing or new customer) permit compensation methods to be calculated with reference to and applied to a specific transaction. The Bureau further notes that the permissible methods of compensation to be calculated with reference to and applied to multiple transactions should be considered together with existing comment 36(d)(1)–6 that provides interpretation of ''periodic changes in loan originator compensation.'' That comment gives as an example 6-months as a permissible period for revising compensation after considering multiple transactions and other variables over time.

Varies Based On

TILA section 129B(c)(1) prohibits a mortgage originator from receiving, and any person from paying a mortgage originator, ''compensation that *varies* based on'' the terms of the loan (emphasis added). The prohibition in existing § 1026.36(d)(1) is on ''compensation in an amount that *is based on*'' the transaction's terms and conditions (emphasis added). In the proposal, the Bureau stated its belief that the meaning of the statute's reference to compensation that ''varies'' based on transaction terms is already embodied in § 1026.36(d)(1). Thus, the Bureau's proposal would not have revised § 1026.36(d)(1) to include the word ''varies.''

The Bureau further stated its belief in the proposal that compensation to loan originators violates the prohibition if the amount of the compensation is based on the terms of the transaction (that is, a violation does not require a showing of any person's subjective intent to relate the amount of the payment to a particular loan term). Proposed new comment 36(d)(1)–1.i would have clarified these points. The Bureau further proposed new comment 36(d)(1)–1 be adopted in place of existing comment 36(d)(1)–1, the substance of which would have been moved to comment 36(a)–5, as discussed above.

The proposed comment also would have clarified that a difference between the amount of compensation paid and the amount that would have been paid for different terms might be shown by a comparison of different transactions, but a violation does not require a comparison of multiple transactions.

The Bureau did not receive any comments on this proposal. The Bureau is adopting the substance of the comment as proposed but further clarifying that when there is a compensation policy in place and the objective facts and circumstances indicate the policy was followed, the determination of whether compensation would have been different if a transaction term had been different is made by analysis of the policy. A comparison of multiple transactions and amounts of compensation paid for those transactions is generally needed to determine whether compensation would have been different if a transaction term had been different when there is no compensation policy, or when a compensation policy exists but has not been followed. The revised comment is intended to provide loan originator organizations, creditors, and other persons that maintain and follow permissible loan originator compensation policies greater certainty about whether they are in compliance.

For the reasons discussed above, this final rule adopts new comment 36(d)(1)–1 as proposed and moves existing comment 36(d)(1)–1 to comment 36(a)–5.

Pooled Compensation

Comment 36(d)(1)–2 currently provides examples of compensation that is based on transaction terms or conditions. Mortgage creditors and others have raised questions about whether loan originators that are compensated differently than one another and originate loans with different terms are prohibited under § 1026.36(d)(1) from pooling their compensation and sharing in that compensation pool. The Bureau proposed to revise comment 36(d)(1)–2.ii to make clear that, where loan originators have different commission rates or other compensation plans and they each originate loans with different terms, § 1026.36(d)(1) does not permit the pooling of compensation so that the loan originators share in that pooled compensation. For example, assume that Loan Originator A receives a commission of 2 percent of the loan amount for each loan that he or she originates and originates loans that generally have higher interest rates than the loans that Loan Originator B originates. In addition, assume Loan Originator B receives a commission of 1 percent of the loan amount for each loan that he or she originates and originates loans that generally have lower interest rates than the loans originated by Loan Originator A. In this example, proposed comment 36(d)(1)–2.ii would have clarified that the compensation of the two loan originators may not be pooled so that the loan originators share in that pooled compensation.

In the supplementary information to the proposal, the Bureau stated its belief that this type of pooling is prohibited by § 1026.36(d)(1) because each loan originator receives compensation based on the terms of the transactions they collectively make. This type of pooling arrangement could provide an incentive for the participating loan originators to steer some consumers to loan originators that originate loans with less favorable terms (for example, that have higher interest rates) to maximize their overall compensation.

The Bureau received only one comment on this proposed revision, and that commenter favored the proposal. For the reasons discussed above, this final rule adopts comment 36(d)(1)–2.ii (redesignated as comment 36(d)(1)–2.iii) as proposed in substance, although the proposed language has been streamlined.

Creditor's Flexibility in Setting Loan Terms

Comment 36(d)(1)–4 currently clarifies that § 1026.36(d)(1) does not limit the creditor's ability to offer certain loan terms. Specifically, comment 36(d)(1)–4 specifies that § 1026.36(d)(1) does not limit a creditor's ability to offer a higher interest rate as a means for the consumer to finance the payment of the loan originator's compensation or other costs that the consumer would otherwise pay (for example, in cash or by increasing the loan amount to finance such costs). Thus, a creditor is not prohibited by § 1026.36(d)(1) from charging a higher interest rate to a consumer who will pay some or none of the costs of the transaction directly, or offering the consumer a lower rate if the consumer pays more of the costs directly. The comment states, for example, that § 1026.36(d)(1) does not prohibit a creditor from charging an interest rate of 6.0 percent where the consumer pays some or all of the transaction costs and an interest rate of 6.5 percent where the consumer pays none of those costs. The comment also clarifies that § 1026.36(d)(1) does not limit a creditor from offering or providing different loan terms to the consumer based on the creditor's assessment of credit and other risks (such as where the creditor uses risk-based pricing to set the interest rate for consumers). Finally, the comment notes that a creditor is not prohibited under § 1026.36(d)(1) from charging consumers interest rates that include an interest rate premium to recoup the loan originator's compensation through increased interest paid by the consumer (such as by adding a 0.25 percentage point to the interest rate on each loan transaction). This interpretation recognized that creditors that pay a loan originator's compensation generally recoup that cost through a higher interest rate charged to the consumer.

The Bureau proposed to revise comment 36(d)(1)–4 to harmonize it with the Bureau's proposal to implement TILA section 129B(c)(2)(B)(ii), which would have prohibited consumers from paying upfront points and fees on certain transactions. As discussed in the section-by-section analysis of § 1026.36(d)(2)(ii), the Bureau is not adopting this restriction in the final rule. Nevertheless, the Bureau believes it is appropriate to revise this comment for clarity. Specifically, as revised, comment 36(d)(1)–4 provides that, if a creditor pays compensation to a loan originator in compliance with § 1026.36(d), the creditor may recover the costs of the loan originator's compensation and other costs of the transaction by charging the consumer points or fees or a higher interest rate or a combination of these. Thus, the final comment clarifies the existing comment that in such transactions, a creditor may charge a higher interest rate to a consumer who will pay fewer of the costs of the transaction at or before closing, or it may offer the consumer a lower rate if the consumer pays more of the transaction costs at or before closing. For example, if the consumer pays half of the transaction costs at or before closing, a creditor may charge an interest rate of 6.0 percent but, if the consumer pays none of the transaction costs at or before closing, a creditor may charge an interest rate of 6.5 percent. In transactions where a creditor pays compensation to a loan originator in compliance with § 1026.36(d), a creditor also may offer different consumers varying interest rates that include a consistent interest rate premium to recoup the loan originator's compensation through increased interest paid by the consumer (such as by consistently adding 0.25 percentage points to the interest rate on each transaction where the loan originator is compensated based on a percentage of the amount of the credit extended).

Point Banks

The Bureau stated in the proposal that it had considered proposing commentary language addressing whether there are any circumstances under which point banks are permissible under § 1026.36(d).[87] Based on the views expressed by the Small Entity Representatives participating in the Small Business Review Panel process, other stakeholders during outreach, and the Bureau's own analysis, the Bureau stated that it believed that there should be no circumstances under which point banks are permissible, and the proposal would have continued to prohibit them in all cases. A few commenters, including a community bank and an organization representing State bank supervisors, expressed support for the Bureau's decision not to allow point banks, and no commenters objected to the Bureau's proposed approach. The Bureau is not adopting in this final rule any provision purporting to describe circumstances under which point banks would be permissible under § 1026.36(d)(1).

Pricing Concessions

As an outgrowth of the general ban on varying compensation based on the terms of a transaction, the Board's 2010 Loan Originator Final Rule included commentary that interprets § 1026.36(d)(1)(i) to prohibit changes in loan originator compensation in connection with a pricing concession, *i.e.,* a change in transaction terms. Specifically, comment 36(d)(1)–5 clarifies that a creditor and loan originator may not agree to set the originator's compensation at a certain level and then subsequently lower it in selective cases (such as where the consumer is offered a reduced rate to meet a quote from another creditor). The Board adopted the commentary out of concern that permitting creditors to decrease loan originator compensation because of a change in terms favorable to the consumer would result in loopholes and permit evasions of the rule. 75 FR 58509, 58524 (Sept. 24, 2010). In particular, the Board reasoned, if a creditor could agree to set originators' compensation at a high level generally and then subsequently lower the compensation in selective cases based on the actual loan terms, that practice could have the same effect as increasing the originator's compensation for higher rate loans. *Id.* The Board stated that such compensation practices are harmful and unfair to consumers. *Id.*

The Bureau proposed three revisions to the § 1026.36(d)(1) commentary addressing whether a loan originator may bear the cost of a pricing concession through reduced compensation.[88] The first change proposed by the Bureau was to revise comment 36(d)(1)–5 to clarify that, while the *creditor* may change loan terms or pricing to match a competitor, to avoid triggering high-cost mortgage provisions, or for other reasons, the *loan originator's compensation* on that transaction may not be changed for those reasons. Revised comment 36(d)(1)–5 would have further clarified that a loan originator may not agree to reduce its compensation or provide a credit to the consumer to pay a portion of the consumer's closing costs, for example, to avoid high-cost mortgage provisions. The revised comment also would have included a cross-reference to new proposed comment 36(d)(1)–7 for further interpretation, as discussed below.

The proposal also would have removed existing comment 36(d)(1)–7, which states that the prohibition on compensation based on transaction terms does not apply to transactions in which any loan originator receives compensation directly from the consumer (*i.e.,* consumer-paid compensation) under the existing rule. As discussed above, the Dodd-Frank Act now applies the prohibition on compensation based on transaction terms to consumer-paid compensation. Thus, the Bureau stated that it believed it was appropriate to propose to remove existing comment 36(d)(1)–7 and to interpret comment 36(d)(1)–5 as applying to loan originator organizations that receive compensation directly from consumers as well as to

[87] A point bank is a continuously maintained accounting balance of basis points credited to a loan originator by a creditor for originations. From the point bank, amounts are debited when ''spent'' by the loan originator to obtain pricing concessions from the creditor on a consumer's behalf for any transaction. For further explanation of how point banks operate, see the section-by-section analysis of proposed § 1026.36(d)(1)(i). 77 FR 55294 (Sept. 7, 2012).

[88] The revisions to comment 36(d)(1)–5 and 36(d)(1)–7 address the following scenarios: (1) Where a creditor reduces the compensation paid to an individual loan originator in connection with a change in transaction terms; (2) where a creditor reduces the compensation paid to a loan originator organization in connection with a change in transaction terms, with or without a corresponding reduction by the loan originator organization in the compensation paid to an individual loan originator; or (3) in a transaction where the loan originator organization receives compensation directly from the consumer, where a loan originator organization reduces its own compensation with or without a corresponding reduction in compensation paid to an individual loan originator. Thus, these revisions do not address where a creditor or loan originator organization alters transaction terms that do not consist of or result in payment of loan originators.

loan originators that receive compensation from creditors.

Finally, in place of existing comment 36(d)(1)–7, the Bureau proposed to include a new comment 36(d)(1)–7, to clarify that the interpretation that § 1026.36(d)(1)(i) prohibits loan originators from decreasing their compensation to bear the cost of pricing concessions does not apply where the transaction terms change after the initial offer due to an unanticipated increase in certain closing costs. The Bureau believed that it was appropriate to propose this clarification because such situations did not present a risk of steering and could allow additional flexibility to the parties to consummate a transaction after unexpected developments. Specifically, new comment 36(d)(1)–7 would have clarified that, notwithstanding comment 36(d)(1)–5, § 1026.36(d)(1) does not prohibit loan originators from decreasing their compensation to cover unanticipated increases in non-affiliated third-party closing costs that exceed limits imposed under the RESPA disclosure rules and other applicable laws. The RESPA disclosure rules (implemented in Regulation X) require creditors to estimate the costs for settlement services within a few days of application, and restrict the amount of cost increases beyond those estimates (*i.e.,* ''tolerance'' requirements [89]) depending on whether the settlement service provider is selected by the creditor, by the consumer from a list provided by the creditor, or by the consumer on the open market. Thus, the proposed comment would have permitted pricing concessions to cover unanticipated increases in non-affiliated third-party closing costs that exceed the Regulation X tolerances, provided that the creditor or the loan originator does not know or should not reasonably be expected to know the costs in advance.

Proposed comment 36(d)(1)–7 also would have explained, by way of example, that a loan originator is reasonably expected to know the amount of the third-party closing costs in advance if the consumer is allowed to choose from among only three pre-approved third-party service providers. In contrast, where a consumer is permitted to shop for the third-party service provider and selects a third-party service provider entirely independently of any pre-approval or recommendation of the creditor or loan originator, the loan originator might not be reasonably expected to know the amount of the closing costs in advance because of the lack of communication and coordination between the loan originator and the third-party service provider prior to provision of the estimate. The Bureau stated in the proposal that if a loan originator repeatedly reduces its compensation to bear the cost of pricing concessions for the same categories of closing costs across multiple transactions based on a series of purportedly unanticipated expenses, proposed comment 36(d)(1)–7 would not apply to this situation because the loan originator would be reasonably expected to know the closing costs across multiple transactions.

As noted above, the Bureau explained it believed the new comment was appropriate because reductions in loan originator compensation to bear the cost of pricing concessions, when made in response to unforeseen events outside the loan originator's control to comply with otherwise applicable legal requirements, do not raise concerns about the potential for steering consumers. The Bureau also stated that this further clarification would have effectuated the purposes of, and facilitated compliance with, TILA section 129B(c)(1) and § 1026.36(d)(1)(i) because, without it, creditors and loan originators might incorrectly conclude that a loan originator bearing the cost of these pricing concessions would violate those provisions, or creditors and loan originators could face unnecessary uncertainty with regard to compliance with these provisions and other laws, such as Regulation X's tolerance requirements (as applicable). The Bureau further solicited comment on whether the proposed revisions to the § 1026.36(d)(1) commentary would be appropriate, too narrow, or create a risk of undermining the principal prohibition of compensation based on a transaction's terms.

The Bureau received approximately 20 comments regarding the proposed revision to the § 1026.36(d)(1) commentary to allow loan originators to reduce their compensation to cover unanticipated increases in non-affiliated third-party closing costs that would exceed applicable legal requirements. Several consumer groups expressed opposition to this proposal, asserting that the Bureau should not allow reductions in loan originator compensation to bear the cost of pricing concessions under any circumstances. They stated that permitting loan originators to reduce their compensation to account for increases in third-party fees will weaken the incentive for third parties to provide accurate estimates of their fees (thereby undermining the transparency of the market); place upward pressure on broker compensation to absorb unanticipated closing cost increases; and encourage violations of RESPA section 8's prohibition on giving or accepting a fee, kickback, or any other thing of value in exchange for referrals of settlement service business involving a federally related mortgage loan. The consumer groups also criticized as unrealistic the proposal to permit reductions in loan originator compensation to bear the cost of pricing concessions only when a loan originator does not know or should not reasonably be expected to know the amount of the closing cost in advance. In the consumer groups views, loan originators, by virtue of their experience, will or should always know the actual closing costs; thus, the Bureau's premise for the proposed exception to the prohibition on reducing loan originator compensation to bear the cost of a pricing concession will never occur in practice.

An organization commenting on behalf of State bank supervisors supported allowing reductions in compensation to bear the cost of pricing concessions made in response to unforeseen events genuinely outside the control of the loan originator. The group

[89] Tolerance requirements (tolerances) are accuracy standards under Regulation X, with respect to the good faith estimate which summarizes estimated settlement charges and is provided to borrowers under RESPA section 5(c) (RESPA GFE). *See generally* 12 CFR 1024.7(e) and (f). Regulation X provides for three categories of tolerances. Section 1024.7(e)(1) of Regulation X provides that the actual settlement charges may not exceed the amounts included on the RESPA GFE for (1) the origination charge, (2) while the borrower's interest rate is locked, the credit or charge for the interest rate chosen, (3) while the borrower's interest rate is locked, the adjusted origination charge; and (4) transfer taxes (zero percent tolerance). Section 1024.7(e)(2) provides that the sum of the settlement charges for the following services may not be greater than 10 percent above the sum of the estimated charges for those services included on the RESPA GFE for (1) lender-required settlement services, where the lender selects the third-party settlement service provider, (2) lender-required services, title services and required title insurance, and owner's title insurance, when the borrower uses a settlement service provider identified by the loan originator, and (3) government recording charges (10 percent tolerance). Section 1024.7(e)(3) provides that all other estimated charges may change by any amount prior to settlement (no tolerance). Under Regulation X, the estimates included on the RESPA GFE generally are binding within the tolerances. 12 CFR 1024.7(f). In limited instances, however, a revised RESPA GFE may be provided reflecting an increase in settlement charges (*e.g.,* for changed circumstances, defined in 12 CFR 1024.2(b), that result in increased settlement charges or a change in the borrower's eligibility for the specific loan terms identified in the RESPA GFE). *Id.* In the 2012 TILA–RESPA Proposal, the Bureau proposed certain changes to the tolerances, such as subjecting settlement charges by lender-affiliated providers to zero percent tolerance. *See* 77 FR 51169–72 (Aug. 23, 2012). For a discussion of tolerances more generally, see the 2012 TILA–RESPA Proposal, 77 FR 51165–75 (Aug. 23, 2012).

wrote that such reductions in loan originator compensation should not raise concerns about the potential for steering consumers to particular transaction terms. The group also stated that the proposed changes to the commentary to § 1026.36(d)(1) would provide needed clarity and coherence in this area.

Many industry commenters, including large and medium-sized financial institutions as well as several national trade associations, supported in principle the Bureau's interpretation of § 1026.36(d)(1) to permit reductions in loan originator compensation in the circumstances described in proposed revised comment 36(d)(1)–7. One community bank stated its appreciation for the Bureau providing better insight into an area that, according to the bank, has been vague since the existing regulation went into effect and asserted that the Bureau is correct in allowing for reductions in loan originator compensation to bear the cost of pricing concessions in certain instances where the consumer will not suffer material harm. The bank, however, criticized the circumstances described in proposed revised comment 36(d)(1)–7 as too subjective and narrow. A financial holding company commented that the language permitting a reduction in loan originator compensation to bear the cost of a pricing concession only if the loan originator does not know or is not reasonably expected to know the amount of the closing costs in advance was too ambiguous. A trade association representing the mortgage industry questioned the meaning in the proposed commentary provision of the term ''unanticipated expenses'' because, the association stated, these types of additional expenses would typically constitute changed circumstances, which are already the subject of redisclosure of the RESPA GFE.

Some industry commenters urged the Bureau to allow reductions in loan originator compensation to bear the cost of pricing concessions under additional circumstances, such as to cover closing cost increases within the Regulation X tolerance requirements (in contrast to the proposal, which would permit pricing concessions only where the closing cost increase exceeds limits imposed by applicable law); to avoid the triggering of Federal and State high-cost mortgage provisions; and to ensure that a credit transaction is a qualified mortgage under Federal ability-to-repay provisions.[90] One large depository institution asked that the commentary clarify that reductions in loan originator compensation to bear the cost of pricing concessions are permitted for closing cost increases quoted by pre-approved service providers if the increase was caused by an event that neither the service provider nor the loan originator reasonably could have predicted in the ordinary course of business. Several individual loan originators asked to allow reductions in loan originator compensation to cover rate-lock extensions. One mortgage broker suggested a cap of $500 for reductions in loan originator compensation to bear the cost of pricing concessions.

Several industry commenters requested that reductions in loan originator compensation to bear the cost of pricing concessions be permitted in the case of loan originator ''error,'' though these commenters differed slightly on some details. For instance, one large depository institution urged the Bureau to allow reductions in loan originator compensation to bear the cost of pricing concessions to cover expenses incurred by the creditor as a result of inadvertent errors by the individual loan originator, such as misquoting a creditor or third-party charge and making clerical or other errors that result in a demonstrable loss to the creditor (*e.g.,* where the loan originator assures the consumer that the interest rate is being locked but fails to do so). In addition, the same depository institution urged the Bureau to permit reductions in loan originator compensation to allow the creditor to penalize loan originators for their failure to comply with the creditor's policies and procedures even in the absence of a demonstrable loss to the creditor. Another large depository institution asked the Bureau to allow reductions in loan originator compensation to bear the cost of pricing concessions where the loan originator made an error on the RESPA GFE. A national industry trade association asked that a loan originator be allowed to reduce compensation to address an erroneous or mistaken charge on the RESPA GFE, or where poor customer service has been reported. One financial institution also requested that reductions in loan originator compensation to bear the cost of pricing concessions be permitted when there is a misunderstanding over consumer information or to cover ''reduced, waived, or uncollected third-party fees.'' One trade association asked that creditors be able to limit the discretion of loan originators to reduce their compensation to bear the cost of pricing concessions to avoid disparate impact issues under fair lending laws.

One large depository institution and two national trade associations commented that the Bureau should allow reductions in loan originator compensation to bear the cost of pricing concessions granted to meet price competition. One of the trade associations commented that prohibiting reductions in loan originator compensation in these circumstances punishes motivated and informed consumers who are seeking more competitive loan originator compensation from the person closest to the transaction, which is the individual loan originator, by denying such consumers the benefit of their wish to bargain. A trade association representing mortgage brokers similarly stated that loan originators should be permitted to reduce their compensation to provide closing cost credits to a consumer or to match a competitor's price quote. This trade association also asserted that not allowing loan originator organizations to reduce their compensation to bear the cost of pricing concessions for competition creates an ''[un]level playing field'' between loan originator organizations and creditors.

A State housing finance authority urged the Bureau not to impose the ban on reducing loan originator compensation to bear the cost of pricing concessions for loans purchased or originated by governmental instrumentalities. The commenter stated that, under its programs, creditors agree to receive below-market servicing release premiums, and they then pass on some or all of that loss by paying loan originators less for such transactions. The commenter stated further that the proposal would have disruptive effects on its programs because creditors have indicated that they cannot afford to participate if, as they interpret § 1026.36(d)(1)(i) as mandating, they must absorb all of the loss associated with the below-market servicing release premiums. A mortgage company asked that the Bureau allow it to reduce the basis points it pays its loan originators for originating jumbo loans.

The Bureau has considered the comments received and concluded that it is appropriate to finalize the basic approach to pricing concessions outlined in the proposal, while expanding the scope of circumstances in which the compensation paid to a loan originator may be reduced to bear the

[90] As discussed in part II.C above, the Bureau, as part of the Title XIV Rulemakings, has issued the 2013 ATR Final Rule and the 2013 ATR Concurrent Proposal, which together would implement Dodd-Frank Act provisions requiring creditors to determine that a consumer is able to repay a mortgage loan and establishing standards for compliance, such as by making a ''qualified mortgage.''

cost of pricing concessions provided to consumers in response to unforeseen settlement cost increases. The Bureau believes that it is critical to continue restricting reductions in loan originator compensation to bear the cost of pricing concessions to truly unforeseen circumstances, because broader latitude would create substantial opportunities to evade the general rule. The Bureau believes this approach will balance the concerns of industry that the proposed commentary provision regarding permissible reductions in loan originator compensation to bear the cost of pricing concessions was too narrowly crafted, and thus ultimately would have hurt consumers and industry alike, with the concerns of consumer groups that any exception to the existing prohibition would vitiate the underlying rule.

In this final rule, the Bureau is making only one substantive change and several technical changes to its proposed revisions to comment 36(d)(1)–5, which would have described in more detail the interpretation that § 1026.36(d)(1)(i) prohibits reductions in loan originator compensation to bear the cost of pricing concessions. Comment 36(d)(1)–5 now clarifies that a loan originator organization may not reduce its own compensation in a transaction where the loan originator organization receives compensation directly from the consumer (*i.e.,* consumer-paid compensation), with or without a corresponding reduction in compensation paid to an individual loan originator. This language is intended to make clearer that, in light of the deletion of existing § 1026.36(d)(1)(iii) and the removal of existing comment 36(d)(1)–7 (see discussion below), comment 36(d)(1)–5 applies to loan originator organizations that receive compensation directly from consumers.

When a loan originator organization charges consumers fees that are based on the terms of a transaction, the individual loan originators who work for the organization will tend to sell consumers the terms that generate higher income for the loan originator organization, even if the compensation of the individual loan originator is not based on those terms. That is presumably why Congress elected to extend the loan originator compensation rule to cover consumer-paid transactions.[91] The same risk exists if the loan originator organization establishes a uniform fee structure but then discounts its fees to fund pricing concessions. Thus, the Bureau believes that covering pricing concessions by a loan originator organization is required to faithfully implement the TILA section 129B(c)(1) prohibition on varying loan originator compensation based on the terms of a loan. While the Bureau bases this clarification on its interpretation of TILA section 129B(c)(1), it is also supported by its authority under TILA section 105(a) to prescribe rules providing adjustments and exceptions necessary or proper to facilitate compliance. See the section-by-section analysis of § 1026.36(d)(1)(iii) for further discussion of these issues. As a technical matter, this final rule substitutes ''transaction'' for ''loan,'' ''high-cost mortgage'' for ''high-cost loan,'' and ''credit'' for ''loan'' where appearing in existing comment 36(d)(1)–5 to be consistent with terminology used in this final rule and in Regulation Z generally, and in a few instances the word ''originator'' is replaced with ''loan originator'' for consistency purposes.

The Bureau is finalizing the removal of existing comment 36(d)(1)–7, which states that the prohibition on compensation based on transaction terms does not apply to transactions in which any loan originator receives compensation directly from the consumer (*i.e.,* consumer-paid compensation) under the existing rule. The Bureau did not receive any comments addressing this specific proposal.[92] As discussed above, the Dodd-Frank Act now applies the prohibition on compensation based on transaction terms to consumer-paid compensation. Thus, the Bureau continues to believe that it is appropriate to propose to remove existing comment 36(d)(1)–7. As discussed above, the Bureau is also revising comment 36(d)(1)–5 to clarify its application to loan originator organizations that receive compensation directly from consumers.

In this final rule, comment 36(d)(1)–7 largely follows the approach set forth in the proposed comment 36(d)(1)–7, which would have permitted loan originators to reduce their compensation to bear the cost of pricing concessions in a very narrow set of circumstances where there was an unanticipated increase in certain settlement costs beyond applicable tolerance requirements. The Bureau believes that allowing reductions in loan originator compensation in too permissive circumstances would undermine the prohibition against compensation based on a transaction's terms. Existing comment 36(d)(1)–5 prevents creditors and loan originators from evading the prohibition in § 1026.36(d)(1) by systematically setting loan originator compensation at a non-competitive, artificially high baseline and then allowing discretion to loan originators to lower their compensation (by giving the concession) in selective cases, either unilaterally or upon request by consumers. More sophisticated consumers who choose to negotiate the loan originator compensation may benefit from the ability of loan originators to grant concessions. On the other hand, if reductions in loan originator compensation to bear the cost of pricing concessions were allowed under all circumstances, those consumers who do not shop or who otherwise lack the knowledge or expertise to negotiate effectively may be vulnerable to creditors or loan originators that consistently inflate price quotes. Thus, an interpretation of § 1026.36(d)(1)(i) to allow reductions in loan originator compensation to bear the cost of a pricing concession in a broad set of circumstances could create an opening to upcharge consumers across the board.

For example, a creditor may have a standard origination fee of $2,000 that, pursuant to its arrangement with its individual loan originators, is split evenly between the creditor and the individual loan originators. The creditor budgets for this origination fee in terms of its expected revenues on each transaction. However, the creditor and its individual loan originators might have an additional arrangement whereby: (1) The individual loan originators initially estimate the origination fee as $3,000 to every consumer; (2) the individual loan originators are permitted to make pricing concessions to lower the quoted origination fee to a minimum of $2,000; and (3) the creditor and individual loan originators split equally the actual origination fee collected in each case, with or without any pricing concessions. Assume that sophisticated consumer X, when quoted the $3,000 origination fee, recognizes that the fee is not competitive and requests that the individual loan originator with whom the consumer is interacting to lower it, to which the individual loan originator agrees. On the other hand, less sophisticated consumer Y, when quoted the $3,000 origination fee, does not

[91] For more discussion regarding a consumer's payment to a loan originator organization, see this section-by-section analysis of § 1026.36(d)(1)(i) under the heading *Prohibition Against Payments Based on a Term of a Transaction.*

[92] As noted above, the Bureau did receive several comments urging it to allow loan originator organizations to reduce their compensation to meet price competition.

attempt to negotiate the fee. Consumer Y would thus be vulnerable to this means of evading § 1026.36(d)(1) that would exist but for comment 36(d)(1)–5 on reductions in loan originator compensation to bear the cost of pricing concessions.[93] The Bureau is concerned that this practice would significantly undermine the prohibitions on compensation based on transaction terms in § 1026.36(d)(1) and the similar statutory prohibition in Dodd-Frank Act section 1403, which this final rule is implementing.

In particular, the Bureau is not interpreting § 1026.36(d)(1) to permit loan originators to reduce their compensation to bear the cost of a pricing concession in connection with matching a competitor's credit terms, an approach that was suggested by two industry trade associations and one large financial institution. The Bureau believes this interpretation would greatly undermine the general rationale for the prohibition of pricing concessions. As discussed above, a primary purpose of existing comment 36(d)(1)–5 is to prevent creditors and loan originators from effectively evading § 1026.36(d)(1) by doing indirectly what it prohibits directly (*i.e.,* paying loan originators compensation that is based on transaction terms). Although more sophisticated consumers who shop and seek alternative offers may benefit from the ability of loan originators to reduce their compensation in the case of price competition, those consumers who do not shop or who otherwise lack the knowledge or expertise to negotiate effectively may be vulnerable to creditors or loan originators that consistently inflate price quotes. Moreover, in the 2010 Loan Originator Final Rule, the Board recognized that in some cases a creditor may be unable to offer the consumer a more competitively-priced loan without also reducing the creditor's own origination costs, but the Board also noted that creditors finding themselves in this situation frequently will be able to adjust their overall pricing and compensation arrangements to be more competitive generally with other creditors in the market. 75 FR 58509, 58524 (Sept. 24, 2010). The Bureau agrees with the Board's rationale. In light of these considerations, the Bureau is not revising comment 36(d)(1)–7 to permit reductions in loan originator compensation to bear the cost of pricing concessions for price competition.

Moreover, the Bureau also does not agree with the assertion by one trade association that loan originator organizations should be entitled to reduce their compensation for price competition—even if they do not pass along the cost of the pricing concession to their individual loan originators—as a means of attaining parity with creditors. Under the existing regulation, creditors may make pricing concessions in specific cases but may not pass along the cost of such concessions to their individual loan originators or to loan originator organizations. The Bureau believes that changing this rule would be inconsistent with TILA section 103(cc)(2)(F), which was added by Dodd-Frank Act section 1401. TILA section 103(cc)(2)(F) provides that the definition of ''mortgage originator'' expressly excludes creditors (other than creditors in table-funded transactions) for purposes of TILA section 129B(c)(1).[94] 15 U.S.C. 1602(cc)(2)(F). The Dodd-Frank Act thus contemplated treating brokers and retail loan officers equivalently—they are both individual loan originators—but did not likewise contemplate equivalent treatment between creditors (other than those in table-funded transactions) and loan originator organizations. Therefore, the Bureau is not permitting loan originator organizations to reduce their compensation to meet price competition.

At the same time, the Bureau believes it is appropriate to permit loan originators to reduce their compensation to bear the cost of pricing concessions in additional circumstances that, when appropriately cabined to prevent abuse, do not present a risk of steering and allow the parties to credit transactions greater flexibility to close transactions, which benefits consumers and industry alike. For example, several commenters questioned why the Bureau would prohibit a loan originator from covering a rate-lock extension fee when the original rate lock has expired through the loan originator's fault. The Bureau acknowledges that, even with the proposed new comment 36(d)(1)–7, the combined effect of Regulation X and Regulation Z disclosure rules and the prohibition on compensation based on transaction terms in § 1026.36(d)(1)(i) would have been to bar loan originators from reducing their compensation to bear the cost of pricing concessions in these (and many other) circumstances, which could prove detrimental to consumers in some cases.[95] Moreover, the proposal would have allowed reductions in loan originator compensation to bear the cost of pricing concessions only for unanticipated increases in non-affiliated third-party closing costs exceeding applicable legal limits. Where an increase in an actual settlement cost above that estimated on the RESPA GFE is not in excess of Regulation X tolerance limits, the proposed rule would not have permitted any reduction in loan originator compensation to cover the increase or a portion of it. Therefore, a consumer who wants to negotiate down a higher-than-estimated settlement cost could benefit from a loan originator being permitted to reduce its compensation to bear the cost of the reduction in the actual settlement cost.

The Bureau balances these considerations in the final rule. New comment 36(d)(1)–7 clarifies that, notwithstanding comment 36(d)(1)–5, § 1026.36(d)(1) does not prohibit a loan originator from decreasing its compensation in unforeseen circumstances to defray the cost, in whole or part, of an increase in an actual settlement cost over an estimated settlement cost disclosed to the consumer pursuant to section 5(c) of RESPA or an unforeseen actual settlement cost not disclosed to the

[93] The Bureau believes that what would make this kind of arrangement viable, but for the interpretation in comment 36(d)(1)–5, is the fact that the individual loan originator would have discretion to reduce its compensation to bear the cost of a selective pricing concession, as necessary to retain sophisticated consumer X's business. The Bureau recognizes that, even with comment 36(d)(1)–5 in place, a creditor and individual loan originator still could engage in a similar business model involving non-competitive overall credit pricing to support inflated loan originator compensation—but they would have to be content to limit their business exclusively to less sophisticated consumers such as consumer Y because their inability to reduce their compensation to bear the cost of selective pricing concessions would mean foregoing more sophisticated consumers' business. The Bureau is skeptical that the regulatory limitations and market pressures would permit such a model to work on a large scale, if at all. Moreover, the 2013 ATR Final Rule and the 2013 HOEPA Final Rule include loan originator compensation in points and fees for the thresholds for both qualified mortgages and high-cost mortgages, so these points and fees limits impose additional constraints on the ability of creditors and loan originators to inflate loan originator compensation.

[94] As noted earlier, TILA section 129B(c)(1), as added by Dodd-Frank Act section 1403, provides that for any residential mortgage loan no mortgage originator shall receive from any person and no person shall pay to a mortgage originator, directly or indirectly, compensation that varies based on the terms of the loan (other than the amount of the principal). 12 U.S.C. 1639b(c)(1).

[95] This could occur, for example, if the consumer enters into a rate-lock agreement with a creditor, a changed circumstance occurs under Regulation X the effect of which is a delay of the closing date, and the rate-lock expires during the delay. In such a scenario, if the consumer refuses to pay the rate-lock extension fee and the creditor is neither required nor willing to waive or reduce the fee, the transaction may never be consummated if the loan originator, although willing to do so, is not allowed to reduce its compensation to bear the cost of the rate-lock extension fee. *See* 12 CFR 1024.7(f).

consumer pursuant to section 5(c) of RESPA.

The comment explains that, for purposes of comment 36(d)(1)–7, an increase in an actual settlement cost over an estimated settlement cost (or omitted from that disclosure) is unforeseen if the increase occurs even though the estimate provided to the consumer (or the omission from that disclosure) is consistent with the best information reasonably available to the disclosing person at the time of the estimate. The Bureau believes that repeated increases in or omissions of one or more categories of settlement costs over multiple transactions may indicate that the disclosing person is not estimating the settlement cost consistent with the best information reasonably available, which in turn may suggest that the person is systematically underestimating (or omitting) such cost.[96] While the Bureau bases this clarification on its interpretation of TILA section 129B(c)(1), it is also supported by its authority under TILA section 105(a) to prescribe rules providing adjustments and exceptions necessary or proper to facilitate compliance.

Comment 36(d)(1)–7 provides two examples of reductions in compensation to bear the cost of pricing concessions that would be permitted under § 1026.36(d)(1). Comment 36(d)(1)–7.i presents the example of a consumer who agrees to lock an interest rate with a creditor in connection with the financing of a purchase-money transaction. A title issue with the property being purchased delays closing by one week, which in turn causes the rate lock to expire. The consumer desires to re-lock the interest rate. Provided that the title issue was unforeseen, the loan originator may decrease the loan originator's compensation to pay for all or part of the rate-lock extension fee. Comment 36(d)(1)–7.ii presents the example of when applying the tolerance requirements under the regulations implementing RESPA sections 4 and 5(c), there is a tolerance violation of $70 that must be cured. The comment clarifies that, provided the violation was unforeseen, the rule is not violated if the individual loan originator's compensation decreases to pay for all or part of the amount required to cure the tolerance violation.

[96] In addition to reductions in loan originator compensation not being permitted under such circumstances pursuant to comment 36(d)(1)–7, such activity may also constitute a violation of the RESPA section 5(c) requirement of a good faith estimate.

Regarding certain other comments from industry, the Bureau has not, in this final rule, tied the permissibility of reducing loan originator compensation to bear the cost of pricing concessions to the specific type of transaction or the nature of the originator or secondary market purchaser, as two commenters requested (*i.e.,* by urging the Bureau to exempt jumbo loans and loans purchased or originated by governmental instrumentalities). The Bureau believes that allowing reductions in loan originator compensation to bear the cost of pricing concessions on a categorical basis for certain loan types and originator or secondary market purchaser identity would ignore the possibility of steering incentives that may be present in such circumstances. Moreover, the Bureau believes that allowing reductions in compensation to bear the cost of pricing concessions for any reason up to a specified dollar amount, as one mortgage broker commenter suggested, would be inappropriate. In cases in which there are truly unforeseen circumstances, there is no reason to cap the dollar amount of the concession. And in other cases, a generic permissible amount of concessions could create precisely the type of incentive to upcharge across all consumers that the general prohibition is designed to prevent.

The Bureau has not revised comment 36(d)(1)–7 to permit expressly reductions in loan originator compensation to bear the cost of a pricing concession for ''clerical error.'' As noted above, the commenters who suggested the Bureau permit reductions in compensation for ''clerical error'' gave different details about the scope of the suggested exception. The Bureau believes this term would be difficult to define. Moreover, the Bureau believes the scenarios cited by some commenters in urging the Bureau to allow concessions in these circumstances (*e.g.,* where the loan originator assures the consumer that the interest rate is being locked but fails to do so) would already be covered by revised comment 36(d)(1)–7, which allows reductions in loan originator compensation to bear the cost of pricing concessions where there has been an unforeseen increase in a settlement cost above that estimated on the disclosure delivered to the consumer pursuant to RESPA section 5(c) (or omitted from that disclosure).

The Bureau is not revising comment 36(d)(1)–7 to address expressly whether loan originators may reduce their compensation to bear the cost of pricing concessions made to avoid the triggering of Federal and State high-cost mortgage provisions or to ensure that a credit transaction is a qualified mortgage under Federal ability-to-repay provisions, as certain industry commenters requested. The Bureau believes that exceptions in these circumstances to the general prohibition on reducing loan originator compensation in connection with pricing concessions are not warranted because the rationale underlying the general prohibition is present. In other words, such an approach could incentivize creditors to systematically overestimate pricing in all circumstances and make selective concessions (of which loan originators would bear the cost) for the sole purpose of avoiding high-cost mortgage triggers or noncompliance with Federal ability-to-repay provisions.

The Bureau also believes that comment 36(d)(1)–7 need not address, as one commenter suggested, reductions in loan originator compensation to penalize a loan originator for its failure to comply with a creditor's policies and procedures in the absence of a demonstrable loss to the creditor. In this scenario, the consumer's transaction terms are not changing; there is no pricing concession. Thus, unless the proxy analysis under § 1026.36(d)(1)(ii) applies, the Bureau believes a reduction in loan originator compensation as a penalty for the loan originator's failure to follow the creditor's policies and procedures where there is no demonstrable loss to the creditor is outside the scope of § 1026.36(d)(1)(i) and thus need not be addressed by comment 36(d)(1)–7. Regarding one commenter's suggestion that the Bureau allow reductions in loan originator compensation if poor customer service is reported, the Bureau likewise does not believe it is necessary to address this issue in comment 36(d)(1)–7. Where poor customer service is reported and the creditor reduces the compensation of the loan originator, but the consumer's transaction terms do not change and the proxy analysis does not apply, the reduction in compensation is outside the scope of § 1026.36(d)(1)(i). If, however, the creditor were to agree to reduce its origination fee or change another transaction term in response to the complaint about poor customer service, allowing reductions in compensation under these circumstances could lead to creditors and loan originators systematically overestimating settlement costs and selectively reducing them in response to complaints of poor customer service. The baseline prohibition thus would apply in that circumstance.

Furthermore, the Bureau does not believe that reductions in loan originator compensation to bear the cost of pricing concessions should be permitted when, as one commenter suggested, there is a ''misunderstanding over a consumer's information'' or to cover ''reduced, waived, or uncollected third-party fees.'' Regarding a ''misunderstanding over consumer information,'' the principles the commenter suggested are too vague to be included as a separate rationale for allowing pricing concessions in comment 36(d)(1)–7, and thus potentially would be over-inclusive and confusing. However, these circumstances may already be covered by the language in comment 36(d)(1)–7 clarifying that the reduction in loan originator compensation may be made to defray an increase in an actual settlement cost above the estimated settlement cost disclosed to the consumer pursuant to section 5(c) of RESPA. Allowing reductions in loan originator compensation to cover reduced, waived, or uncollected third-party fees may not result in any discernible benefit to consumers, and in any event the reduction, waiver, or collection of third-party fees is better addressed separately by the loan originator and creditor outside the context of the transaction.

Finally, the Bureau has not revised comment 36(d)(1)–7 to state that creditors must control loan originators' reductions in compensation to prevent disparate impact issues under fair lending laws, as one commenter suggested. This clarification is not necessary because nothing in comment 36(d)(1)–7 requires reductions in loan originator compensation to bear the cost of pricing concessions or prevents creditors from exercising prudent control over them. Thus, creditors may prohibit their loan originators from reducing their compensation to bear the cost of concessions in certain circumstances, such as to prevent disparate impact issues under fair lending laws.

Compensation Based on Multiple Transactions of an Individual Loan Originator

Section 1026.36(d)(1)(i) prohibits payment of an individual loan originator's compensation that is directly or indirectly based on the terms of ''the transaction.'' In the proposal, the Bureau stated that it believes that ''transaction'' should be read to include multiple transactions by a single individual loan originator because individual loan originators sometimes receive compensation derived from multiple transactions. Existing comment 36(d)(1)–3 lists several examples of compensation methods not based on transaction terms that take into account multiple transactions, including ''[t]he percentage of applications submitted by the loan originator to the creditor that results in consummated transactions.'' *See* existing comment 36(d)(1)–3.vi. To avoid any possible uncertainty, however, the Bureau proposed to clarify, as part of proposed comment 36(d)(1)–1.ii, that § 1026.36(d)(1)(i) prohibits compensation based on the terms of multiple transactions by an individual loan originator. The Bureau did not receive any comments regarding this proposed clarification. The Bureau interprets TILA section 129B(c)(1) to prohibit compensation based on the terms of multiple transactions by the individual loan originator.[97] Further, the Bureau believes that its approach will prevent circumvention or evasion of the statute, consistent with TILA section 105(a). Thus, the Bureau is finalizing the clarification in proposed comment 36(d)(1)–1.ii that § 1026.36(d)(1)(i) prohibits compensation based on the terms of multiple transactions by an individual loan originator.

Compensation Based on Terms of Multiple Individual Loan Originators' Transactions

Although existing § 1026.36(d)(1)(i) prohibits payment of an individual loan originator's compensation that is ''directly or indirectly'' based on the terms of ''the transaction,'' and TILA (as amended by the Dodd-Frank Act) similarly prohibits compensation that ''directly or indirectly'' varies based on the terms of ''the loan,'' the existing regulation and its commentary do not expressly address whether a person may pay compensation that is based on the terms of multiple transactions of multiple individual loan originators. As a result, numerous questions have been posed regarding the applicability of the existing regulation to compensation programs of creditors or loan originator organizations, such as those that involve payment of bonuses or other deferred compensation under company profit-sharing plans[98] or contributions to certain tax-advantaged retirement plans under the Internal Revenue Code (such as 401(k) plans),[99] under which individual loan originators may be paid variable, additional compensation that is based in whole or in part on profitability of the creditor or loan originator organization.[100] As the Bureau noted in the proposal, a profit-sharing plan, bonus pool, or profit pool set aside out of a portion of a creditor's or loan originator organization's profits from which bonuses are paid or contributions are made to qualified

[97] The Bureau believes this interpretation of section 129B(c)(1) is reasonable in light of the common principle that singular words in a statute refer to the plural, and vice versa. *See* 1 U.S.C. 1 (''[U]nless the context indicates otherwise,'' ''words importing the singular include and apply to several persons, parties, or things; words importing the plural include the singular.''); *see also* Congressional Research Report for Congress, Statutory Interpretation: General Principles and Recent Trends (Aug. 31, 2008) at 9, *available at http://www.fas.org/sgp/crs/misc/97-589.pdf.*

[98] As discussed below, the proposal sometimes used the term ''profit-sharing plan'' to describe compensation programs (including ''bonus plans,'' ''profit pools,'' and ''bonus pools'') under which individual loan originators are paid additional compensation based in whole or in part on the profitability of the company, business unit, or affiliate. As discussed below, this final rule effectively substitutes the term ''non-deferred profits-based compensation plan'' for ''profit-sharing plan'' but the term has a somewhat different meaning for purposes of § 1026.36(d)(1)(iv). When referring to the proposal, the Small Business Panel Review process, or comments in response thereto in this section-by-section analysis, the term ''profit-sharing plan'' is retained whereas when referring to the provisions of this final rule, the term ''non-deferred profits-based compensation plan'' is used. The discussion of the proposal, Small Business Panel Review process, or comments in response thereto also sometimes refers to ''profit-sharing bonuses,'' whereas the final rule and the provisions of this section-by-section analysis of the final rule do not use that term.

[99] As discussed below, the proposal sometimes used the term ''qualified plan'' to describe certain tax-advantaged defined benefit and defined contribution plans. The proposal sometimes used the term ''non-qualified plan'' to refer to other defined benefit plans and defined contribution plans. Final § 1026.36(d)(1)(iii) and its commentary do not use the terms ''qualified plan'' and ''non-qualified plan.'' Instead, they use the terms ''designated tax-advantaged plans'' (or ''designated plans'') and ''non-designated plans,'' respectively. When referring to the proposal, the Small Business Panel Review process, or comments in response thereto in this section-by-section analysis, the terms ''qualified plan'' and ''non-qualified plan'' are retained. When referring to the provisions of this final rule, the terms ''designated tax-advantaged plan'' (or ''designated plan'') and ''non-designated plan'' are used.

[100] The Bureau issued a bulletin on April 2, 2012 to address many of these questions. CFPB Bull. No. 2012–2, *Payments to Loan Originators Based on Mortgage Transaction Terms or Conditions under Regulation Z* (Apr. 2, 2012), *available at http://files.consumerfinance.gov/f/201204_cfpb_LoanOriginatorCompensationBulletin.pdf* (CFPB Bulletin 2012–2). CFPB Bulletin 2012–2 stated that, until this final rule was adopted, employers could make contributions to certain ''Qualified Plans'' (defined in CFPB Bulletin 2012–2 to include ''qualified profit sharing, 401(k), and employee stock ownership plans'') for individual loan originator employees even if the contributions were derived from profits generated by mortgage loan originations. It explicitly did not address how the rules applied to ''profit-sharing arrangements/plans that are not in the nature of Qualified Plans,'' which the Bureau wrote would be addressed in this rulemaking. Until the final rule goes into effect, the clarifications in CFPB Bulletin 2012–2 will remain in effect.

plans or non-qualified plans may reflect transaction terms of multiple individual loan originators taken in the aggregate. Consequently, these types of compensation programs create potential incentives for individual loan originators to steer consumers to particular transaction terms based on the interests of the loan originator rather than the consumer, which is one of the fundamental problems that TILA section 129B(c) and the existing regulation are designed to address. Moreover, limiting the scope of compensation restrictions in § 1026.36(d)(1)(i) to an overly narrow interpretation of ''the transaction'' could undermine the rule. For example, a creditor or loan originator organization could restructure its compensation policies to pay a higher percentage of compensation through bonuses under company profit-sharing plans, rather than through compensation, such as commissions, that is not based on the terms of multiple transactions of multiple individual loan originators.

To address these concerns, the Bureau proposed a new comment 36(d)(1)–1.ii in part to clarify that the prohibition on payment and receipt of compensation based on the transaction's terms under § 1026.36(d)(1)(i) covers compensation that directly or indirectly is based on the terms of multiple transactions of multiple individual loan originators employed by the person. Proposed comment 36(d)(1)–2.iii.C would have provided further clarification on these issues.

The Bureau stated in the section-by-section analysis of proposed § 1026.36(d)(1)(i) that the proposed approach was necessary to implement the statutory provisions, address the potential incentives to steer consumers to particular transaction terms that are present with profit-sharing plans, and prevent circumvention or evasion of the statute. The Bureau noted, however, that any standard would need to account for circumstances where potential incentives were sufficiently attenuated to permit such compensation. To that end, proposed § 1026.36(d)(1)(iii) would have permitted contributions by creditors or loan originator organizations to qualified plans in which individual loan originators participate. The proposal also would have permitted payment of bonuses under profit-sharing plans and contributions to non-qualified plans even if the compensation were directly or indirectly based on the terms of multiple individual loan originators' transactions, so long as: (1) The revenues of the mortgage business did not constitute more than a certain percentage of the total revenues of the person or business unit to which the profit-sharing plan applies, as applicable, with the Bureau proposing alternative threshold amounts of 25 and 50 percent, pursuant to proposed § 1026.36(d)(1)(iii)(B)(*1*); or (2) the individual loan originator being compensated was the originator for a de minimis number of transactions (*i.e.,* no more than five transactions in a 12-month period), pursuant to proposed § 1026.36(d)(1)(iii)(B)(*2*). In all instances, however, the proposal stated that the creditor or loan originator organization could not take into account the terms of the individual loan originator's transactions, pursuant to the restriction on this compensation in proposed § 1026.36(d)(1)(iii)(A). Thus, the creditor or loan originator organization could not vary the amount of the contribution or distribution based on whether the individual loan originator is the loan originator for high rate loans, for example. These aspects of the proposal are discussed in more detail in the section-by-section analysis of § 1026.36(d)(1)(iii) and (iv) in this final rule, below.

The Bureau sought comment on three additional issues related to the proposed commentary that would have clarified that terms of multiple loan originators' transactions were subject to the compensation restrictions under § 1026.36(d)(1)(i). First, the proposal recognized that the strength of potential incentives to steer consumers to particular transaction terms presented in specific profit-sharing plans may vary based on many factors, including the organizational structure, size, diversity of business lines, and compensation arrangements. Thus, in certain circumstances, a particular combination of factors may substantially mitigate the potential steering incentives arising from profit-sharing plans.[101] The Bureau thereby solicited comment on the scope of the steering incentive problem presented by profit-sharing plans, whether the proposal effectively addressed these issues, and whether a different approach would better address these issues. The Bureau also stated in the proposal that it was cognizant of the burdens compensation restrictions may impose on creditors, loan originator organizations, and individual loan originators. In addition, the proposal expressed the Bureau's belief that bonuses and contributions to defined contribution and benefit plans, when paid for legitimate reasons, could serve as beneficial inducements for individual loan originators to perform well and become invested in the success of their organizations. The Bureau solicited comment on whether the proposed restrictions accomplished the Bureau's objectives without unduly restricting compensation arrangements that addressed legitimate business needs. Lastly, the Bureau noted that it was not proposing any clarifications to existing comment 36(d)(1)–1,[102] which addresses what constitutes compensation and refers to salaries, commissions, and similar payments, because the payment of salary and commissions from revenues earned from a company's mortgage business typically does not raise the same types of concerns about steering consumers to different terms to increase the size of a profit-sharing or bonus pool.[103] The Bureau sought comment on whether the prohibition on compensation relating to transaction terms of multiple individual loan originators should encompass a broader array of compensation arrangements.

Consumer groups commenting on the proposal generally supported the clarification that the prohibition on compensation based on transaction terms would include the terms of multiple transactions of multiple individual loan originators. One consumer group wrote that the proposal generally would provide robust protections and reform in loan originator compensation, and that the proposed comment 36(d)(1)–1.ii would prevent the abuses associated with yield spread premium payments to loan originators. A housing advocacy organization wrote that the Bureau should state specifically that

[101] The Bureau discussed how, for example, the incentive of individual loan originators to upcharge likely diminishes as the total number of individual loan originators contributing to the profit pool increases. The incentives may be mitigated because: (1) Each individual loan originator's efforts will have increasingly less impact on compensation paid under profit-sharing plans; and (2) the ability of an individual loan originator to coordinate efforts with the other individual loan originators will decrease. The Bureau cited a number of economic studies regarding this ''free-riding'' behavior. The Bureau also stated that this may be particularly true at large institutions with many individual loan originators because the nexus among the terms of the transactions of the multiple individual loan originators, the revenues of the organization, the profits of the organization, and the compensation decisions may be more diffuse in a large organization.

[102] As discussed in the section-by-section analysis of proposed § 1026.36(a), the Bureau proposed to move the text of this comment to proposed comment 36(a)–5.

[103] As the Bureau explained in the proposal, salary and commission amounts are more likely than bonuses to be set in advance. Salaries are typically paid out of budgeted operating expenses rather than a ''profit pool''; commissions typically are paid for individual transactions and without reference to the person's profitability; and the salary and commission amounts often are stipulated by an employment or commission agreement.

compensation from a loan originator organization to an individual loan originator cannot be tied to the terms of any loan, individually or in the aggregate. This organization cited two U.S. Department of Justice actions, later settled, that alleged that a large depository institution and a large mortgage company discriminated against African-American and Hispanic borrowers by steering them into subprime mortgages as evidence of the need of the Bureau to disallow any ''loophole'' in the final rule that could encourage similar practices. A coalition of consumer groups wrote that allowing individual loan originators to profit from compensation based on aggregate terms of loans they broker, such as higher interest rates, presents the same risks to consumers as allowing individual loan originators to profit from compensation based on terms of a single transaction. Anything short of a complete prohibition on this practice, they wrote, would permit a payment structure that Congress intended to ban and that makes loan originator compensation even less transparent to consumers.

An organization writing on behalf of State bank supervisors noted that interpretation of existing loan originator compensation standards can be difficult for regulators and consumers and that adjustments to existing rules for purposes of clarity and coherence would be appropriate. The organization was generally supportive of the proposal to clarify and revise restrictions related to pooled compensation, profit-sharing, and bonus plans for originators, depending on the potential incentives to steer consumers to particular transaction terms.

Industry commenters generally opposed new comment 36(d)(1)–1.ii and its underlying premise that compensating individual loan originators based on the terms of multiple individual loan originators' transactions likely creates steering risk. A national trade association representing community banks wrote that the Bureau is right to be concerned with creating conditions that could lead some individual loan originators to steer consumers into transactions that may not be in the best interest of a consumer but would benefit an individual loan originator through greater bonus compensation. The association asserted, however, that the nature of any bonus pool shared by multiple individuals or deferred compensation of any type inherently mitigates steering risk.[104] A national trade association representing the banking industry acknowledged that bonuses can be improperly used as a ''proxy'' for transaction terms, but urged the Bureau not to deem every revenue-based bonus decision to be a proxy. Instead, the association asserted, the possible use of bonuses as a subterfuge for transaction terms should be a focus for enforcement and examination.[105] A large depository institution commenter acknowledged that each individual loan originator whose bonus comes from a profit-derived pool is indirectly incentivized to increase profits and thereby increase the pool's size, but stated that appropriately designed bonus plans consistent with risk management principles should be permissible when the bonus award is directly and primarily based on legitimate factors and incentives (*i.e.,* not directly based on the terms of the transactions of each loan originator). A national industry trade association suggested that the Bureau permit creditors and loan originator organizations to pay a bonus to an individual loan originator when the awarding of the bonus and its amount are ''sufficiently attenuated'' from the terms of the transaction ''so as not to provide a material steering risk for the consumer.'' A State industry trade association commented that appropriately structured profit-sharing and bonus plans incentivize loan originators to make appropriate loans without taking on excessive risk or being overly cautious. Thus, the trade association stated that severely restricting certain types of profit-sharing or bonus plans would not provide consumers with significantly more protection but, instead, would limit the availability of credit to all but the most creditworthy consumers. A law firm that represents small and mid-sized bank clients suggested that the Bureau set forth factors that would be used to determine whether a bonus under a particular incentive compensation plan would be permissible because it was sufficiently attenuated from the terms of multiple loan originators' transactions.

Among industry commenters, credit unions and their trade associations expressed particular opposition to the proposal. A national trade association representing credit unions questioned the Bureau's authority to add comment 36(d)(1)–1.ii, stating that it stretched the bounds of section 1403 of the Dodd-Frank Act by interpreting the statutory prohibition against compensation that varies based on the terms of the ''loan'' to apply to multiple transactions of multiple individual loan originators. A State credit union association wrote that it was unnecessary to extend the prohibitions to compensation based on the terms of multiple loan originators' transactions because: (1) Neither TILA nor existing regulations addresses payment of compensation based on terms of multiple individual loan originators; and (2) it would be tremendously difficult to construct a scheme to evade the existing requirements. This association also stated that the proposal was internally inconsistent because the proposal's section-by-section analysis acknowledged that profit-sharing plans could be a useful and important inducement by employers to individual loan originators to perform well. Another State credit union association stated that credit unions merited special treatment under the rule because there was nothing in the Bureau's administrative record to connect credit union compensation or salary practices to the abuses or practices that contributed to the financial crisis of 2008. This association also asserted that National Credit Union Administration (NCUA) regulations permit certain types of compensation that would be prohibited under the proposal and, thus, urged the Bureau to state that a federally insured credit union that adheres to these regulations is deemed compliant with the loan originator compensation provisions.[106] A State credit union association commented that the Bureau should exempt credit unions from the

[104] This commenter based this assertion on several points, including that participation by multiple employees dilutes the impact and reward for any one participant, the delayed nature of a bonus pool payout erodes the incentive to steer for quick gains, bonus pools merely supplement and augment an employee's compensation, and most bonus plans—especially for community bank loan originators—contain a variety of components other than mortgage revenue.

[105] Several commenters echoed this argument that the types of practices the Bureau is regulating are better suited for examination and enforcement. One State trade association wrote that if bonuses are improperly designed to reward specific individual loan originators for transaction terms, this fact will be ascertainable through examination. A national trade association representing the mortgage industry suggested the Bureau use its authority under the Dodd-Frank Act to prevent unfair, deceptive, or abusive acts or practices. A State credit union trade association suggested the Bureau enforce existing regulations before imposing new regulations. One commenter claimed that the Bureau overreached in its proposal and needed to provide evidence that a profit motive in a transparent cost environment could be an example of an unfair or deceptive practice in order to support the approach it followed in the proposal.

[106] The association specifically cited 12 CFR 701.21(c)(8)(iii), which permits credit unions to pay bonuses or incentives to credit union employees either based on the credit union's overall financial performance or in connection with a loan or loans, provided that the credit union board of directors establishes written policies and internal controls for such incentives or bonuses.

proposed restrictions because credit unions were structured in a way that significantly decreases steering risks (*i.e.,* credit unions provide loan services to member-owners only and member-owners can file complaints in response to any activity detrimental to loan applicants).

Several commenters either asked for clarification on whether compensation tied to company-wide performance would be permitted under the proposal or stated their support for such an approach. A financial holding company suggested that bonus or incentive programs of this sort should be permitted because of the unlikelihood, it asserted, that the loan originator steering a consumer into a higher-profit product would improve the profitability of the entire bank. A large financial services company commented that some uncertainty remained as to when ''indirect'' compensation would be sufficiently remote to be outside the purview of the rule and, consequently, requested an express exemption for bonuses paid to individual loan originators when the company: (1) Calculates the bonuses under a company-wide program that applies in a similar manner to individuals who are not loan originators; (2) uses predetermined company performance metrics to calculate the bonus; and (3) does not take transaction terms directly into account.[107] A State trade association representing creditors stated that the Bureau should permit compensation plans that relate not only to the performance of an overall organization, but also to the performance of a specific team, branch, or business unit.

A mortgage company wrote that limiting compensation that was indirectly based on terms of transactions would cover almost any form of compensation derived from lender profitability, and the rulemaking instead should focus on compensation specific to the loan originator and the transaction. This commenter also disagreed with the Bureau's statement in the proposal that creditors would restructure their compensation policies to shift more compensation to bonuses in an effort to evade the strictures of the prohibition on compensation based on transaction terms because creating a profit-sharing plan involved many more considerations, particularly for diversified companies.[108]

A few industry commenters raised procedural criticisms and asked for differential treatment for particular institutions. One industry commenter wrote that, based on the volume of proposed rules and the relatively short comment periods, it did not have sufficient time to analyze fully and comprehend the proposal and its potential impact on the commenter's business. A community bank requested that the Bureau exempt all savings institutions with under $1 billion in assets from the rule's compensation restrictions. Another community bank asked the Bureau to make distinctions between portfolio lenders and lenders that generate most revenues from selling loans.

Some industry commenters expressed support for the Bureau's proposed approach on compensation based on transaction terms. A mortgage banker stated that any bonus pool or profit-sharing plan should not be permitted to be derived from the terms of loans because ''the overages [could] work their way back into the pockets of loan originators.'' A mortgage company affiliated with a national homebuilder wrote that it was prudent practice not to compensate loan originators on the terms of the transaction other than the amount of credit extended. A community bank generally praised the proposal for taking into account the impacts of the Dodd-Frank Act on the mortgage banking industry and raised no specific objections to proposed comment 36(d)(1)–1.ii. The bank, however, stated that to attract talented loan originators it needed the ability to offer flexible and competitive compensation programs that rewarded loan production.[109] A financial services company wrote that the provisions in the proposal provided helpful additional commentary to elucidate the rules, particularly because incentive compensation plans at small to mid-size financial institutions that may look to profitability as a component often include senior executive officers who may be covered under the definition of loan originator. Also, some industry commenters that were generally critical of proposed comment 36(d)(1)–1.ii acknowledged that the Bureau's concern that individual loan originators would steer consumers to obtain higher bonuses was not misplaced.

The Bureau is finalizing the substance of comment 36(d)(1)–1.ii largely as proposed. However, the principle that the terms of multiple transactions by an individual loan originator, or the terms of multiple transactions by multiple individual loan originators are encompassed by the baseline prohibition in § 1026.36(d)(1)(i) is now included in text of § 1026.36(d)(1)(i) itself. The Bureau believes that it is appropriate to state clearly in the regulatory text that compensation based on the terms of multiple transactions of multiple individual loan originators is invalid unless expressly permitted by other provisions of this final rule. A clear standard will enhance consumer protections by reducing the potential for abuse and evasion of the underlying prohibition on compensation based on a term of a transaction. Moreover, a clear standard also will reduce industry uncertainty about how the regulation applies to bonuses from non-deferred profits-based compensation plans and contributions to designated plans or non-designated plans in which individual loan originators participate.

In the final rule, comment 36(d)(1)–2.ii has been revised to clarify that compensation to a loan originator that is based upon profits that are determined with reference to mortgage-related business is considered compensation that is based on the terms of transactions of multiple individual loan originators, and thus would be subject to the prohibition on compensation based on a term of a transaction under § 1026.36(d)(1)(i) (although it may be permitted under § 1026.36(d)(1)(iii) or (iv)). The comment cross-references other sections of the regulatory text and commentary for discussion of exceptions permitting compensation based upon profits pursuant to either a ''designated tax-advantaged plan'' or a ''non-deferred profits-based compensation plan,'' and for clarification about the term ''mortgage-related business.'' This language has been added to make more explicit the Bureau's rationale in the proposal that profits from mortgage-related business (*i.e.,* from transactions subject to § 1026.36(d)) are inextricably linked to the terms of multiple transactions of multiple individual loan originators

[107] This commenter also questioned the interplay of the proposal with the 2012 HOEPA Proposal insofar as the 2012 HOEPA Proposal would have redefined points and fees to include certain compensation paid to individual loan originators. As noted earlier in the section-by-section analysis of § 1026.36(a), however, the definition of points and fees across the 2013 HOEPA Final Rule and the 2013 ATR Final Rule includes only compensation that can be attributed to a particular transaction at the time the interest rate is set.

[108] As a general matter, this commenter suggested an alternative approach whereby the creditor would provide a disclosure—in bold face or larger font and set off from other disclosures—urging the consumer to be aware that the loan originator's compensation may increase or decrease based on the profitability of the creditor and urging the consumer to shop for credit to ensure that he or she has obtained the most favorable loan terms.

[109] The community bank commenter also argued that, to attract quality loan originators without having the ability to pay incentive compensation, the bank would have to pay such a high salary that it could risk creating a disincentive for the individual loan originator to produce high volume.

when taken in the aggregate and therefore create potential incentives for individual loan originators to steer consumers to particular transaction terms. The Bureau believes that creditor or loan originator organization profitability from mortgage-related business usually, if not always, depends on the terms of transactions of individual loan originators working for the creditor or loan originator organization.[110] Moreover, to the extent a creditor or loan originator organization wanted to demonstrate that there is no nexus whatsoever between transaction terms and profitability, it would have to disaggregate the components of its profitability. The Bureau is skeptical that this would be feasible and, if so, that it could be done in a way that would not create challenges for examination (by requiring substantial analysis of, *e.g.,* company revenues and profits, and of relationships among business lines and between affiliate profits and revenues).

The Bureau agrees with industry commenters that the payment of profit-sharing bonuses and the making of contributions to designated plans in which individual loan originators participate do not create steering potential under all circumstances. As the Bureau acknowledged in the proposal,[111] any regulation of loan originator compensation needs to account for the variation in organization size, type, compensation scheme, and other factors that, individually or collectively, affect the calculus of whether the steering risk is sufficiently attenuated. For example, one commenter asked the Bureau to permit paying an individual loan originator a bonus as part of a compensation program that uses predetermined performance metrics to determine compensation for all company employees. This type of compensation program, depending on the circumstances, may not be tied directly or indirectly to transaction terms and thus may not implicate the basic rule or, even if tied to profits, may not be structured in a manner that would incentivize individual loan originators to place consumers in mortgages with particular transaction terms. The mitigation or absence of steering potential with respect to this compensation program in one particular setting, however, does not mean that a slightly different compensation program in the same setting or the same compensation program in a slightly different setting would sufficiently mitigate steering incentives.

The Bureau believes that it is preferable to adopt a baseline clear prohibition on the payment of compensation based on the terms of multiple transactions of multiple loan originators (with commentary clarifying that this encompasses compensation that is based upon profits that are determined with reference to mortgage-related business) than to adopt any sort of standard focused on attenuation, materiality, or other legal principles (a ''principles-based'' standard or approach) that would have to be applied to the design and operation of each company's specific compensation program, as suggested by some commenters. Application of a principles-based standard would involve the application of the relevant principles to the design and operation of each company's specific compensation program. Because the application of these principles would necessarily involve a substantial amount of subjectivity, and the design and operation of these programs are varied and complex, the legality of many companies' programs would likely be in doubt. This uncertainty would present challenges for industry compliance, for agency supervision, and agency and private enforcement of the underlying regulation.

The Bureau believes, further, that the disparate standards suggested by industry commenters prove the inherent difficulty of crafting a workable principles-based approach. For example, as noted earlier, one commenter urged the Bureau to permit the use of ''appropriately designed bonus plans consistent with risk management principles'' when the bonus award is ''directly and primarily based on legitimate factors and incentives'' and where ''sufficient mitigating and attenuating factors'' exist, and another industry commenter suggested that the Bureau permit creditors and loan originator organizations to pay a bonus to an individual loan originator when the awarding of the bonus and its amount are ''sufficiently attenuated'' from the terms of the transaction ''so as not to provide a material steering risk for the consumer.'' These standards do not have commonly understood meanings and would need to be defined by the Bureau or left for elaboration through supervisory and enforcement activities and private litigation. Although these definitional and line-drawing judgments are not impossible, they would inevitably add complexity to the rule.

The Bureau, furthermore, disagrees with the industry commenters that asserted that the relationship between incentive compensation programs and individual loan originator steering behavior should be a focus of examination and enforcement to the exclusion of rulemaking. Given the multiplicity and diversity of parties and variability of compensation programs potentially subject to this rulemaking, robust supervision and enforcement in this area would be extremely difficult, if not impossible, without appropriate clarity in the regulation. As noted earlier, an organization commenting on behalf of State banking supervisors stated that the existing rules can be difficult for regulators and consumers to interpret and supported the proposed changes to the existing regulation for purposes of clarity and coherence.

The Bureau also shares the concerns expressed by consumer groups that failing to prohibit compensation based on the terms of multiple transactions of multiple individual loan originators would potentially undermine the existing prohibition on compensation based on transaction terms in § 1026.36(d)(1)(i) and Dodd-Frank Act section 1403. As the consumer groups asserted, setting a baseline rule too loosely could allow for a return of the types of lending practices that contributed to the recent mortgage-lending crisis. This, in turn, would significantly undermine the effect of the Dodd-Frank Act reforms and the 2010 Loan Originator Final Rule. The Bureau believes that defining ''loan'' to mean only a single loan transaction by a single individual loan originator is an overly narrow interpretation of the statutory text and could lead to evasion of the rule. To this end, the Bureau disagrees with the assertion by one commenter that the Bureau lacks authority to interpret the statute in this manner. The Bureau is squarely within its general interpretive authority to implement the Dodd-Frank Act provision. The Bureau is also fully within its specific authority under TILA section 105(a) to issue regulations to effectuate the purposes and prevent evasion or circumvention of TILA. Moreover, the Bureau disagrees with the suggestion by one commenter that it is unnecessary to clarify that § 1026.36(d)(1)(i) covers multiple transactions by multiple individual loan originators because neither TILA nor

[110] As discussed above, many industry commenters objected to the premise in the proposal that compensation programs that feature profits-based bonuses or contributions to qualified plans or non-qualified plans presumptively create steering incentives, but some of those that did so acknowledged that bonuses can be improperly used as a ''proxy'' for transaction terms and, in one case, specifically stated that each individual loan originator whose bonus comes from a profit-derived pool is indirectly incentivized to increase profits and thereby increase the pool's size.

[111] 77 FR 55296 (Sept. 7, 2012).

existing Regulation Z addresses payment of compensation based on the terms of multiple transactions of multiple loan originators. The Bureau believes that given the uncertainty described by some commenters, about the regulation's application to bonuses and qualified and non-qualified plans, industry would benefit from clarification.[112]

The Bureau declines to adopt a special rule for credit unions as proposed by two State credit union associations. The Bureau recognizes that credit unions as well as community banks have a business model and a set of incentives and constraints that set them apart from other types of institutions engaged in similar activities and also are of a smaller scale than many such institutions. However, the Bureau does not believe that individual loan originators who work for a credit union or community bank are less susceptible of steering influences if their compensation can be based on the terms of the transactions either directly or indirectly as through bonuses or contributions tied to profits generated through mortgage-related business. Thus, the Bureau does not believe that it is appropriate to create a blanket exemption for credit unions and community banks from this rule. Moreover, TILA generally is structured around regulating the extension of consumer credit based on the type of transaction, not type of creditor. 12 U.S.C. 5511(b)(4). Absent a sufficiently compelling reason, the Bureau declines to introduce such a differentiation contrary to that general approach.[113] As discussed below, the Bureau is, however, adopting a special safe harbor rule with respect to compensation under a non-deferred profits-based compensation plan to individual loan originators who are loan originators for ten or fewer transactions (under § 1026.36(d)(1)(iv)(B)(*2*)), which rule, the Bureau expects, will be of particular importance to credit unions and community banks. Furthermore, the Bureau disagrees with commenters who argued that credit unions should be treated differently because NCUA regulations permit the payment of certain incentives or bonuses to credit union individual loan originators based on the credit union's overall financial performance or in connection with loans made by credit unions, some of which incentives would be restricted under the Bureau's rule.[114] Accepting the commenters' characterization of the NCUA's regulations as more permissive than the Bureau's, a credit union could comply with both sets of regulations by adhering to the more restrictive one.

Although the Bureau in this final rule generally prohibits compensation that is based on the terms of multiple transactions of multiple individual loan originators (as discussed above), § 1026.36(d)(1)(iii) and (iv) permit compensation that is directly or indirectly based on the terms of multiple individual loan originators' transactions provided that certain conditions are satisfied. These provisions effectively create exceptions to the underlying prohibition on compensation based on transaction terms under appropriately tailored circumstances. For the background discussion of these provisions, including a summary of comments received to proposed § 1026.36(d)(1)(iii) and the Bureau's response to these comments, see the section-by-section analysis of proposed § 1026.36(d)(1)(iii) and (iv).[115]

36(d)(1)(ii)

Amount of Credit Extended

As discussed above, § 1026.36(d)(1)(i) currently provides that a loan originator may not receive and a person may not pay to a loan originator, directly or indirectly, compensation in an amount that is based on any of the transaction's terms or conditions. Section 1026.36(d)(1)(ii) provides that the amount of credit extended is not deemed to be a transaction term or condition, provided compensation is based on a fixed percentage of the amount of credit extended. Such compensation may be subject to a minimum or maximum dollar amount.

Use of the term ''amount of credit extended.'' TILA section 129B(c)(1), which was added by section 1403 of the Dodd-Frank Act, provides that a mortgage originator may not receive (and no person may pay to a mortgage originator), directly or indirectly, compensation that varies based on the terms of the loan (other than the amount of the principal). 12 U.S.C. 1639b(c)(1). Thus, TILA section 129B(c)(1) permits mortgage originators to receive (and a person to pay mortgage originators) compensation that varies based on the ''amount of the principal'' of the loan. Section 1026.36(d)(1)(ii) currently uses the phrase ''amount of credit extended'' instead of the phrase ''amount of the principal'' as set forth in TILA section 129B(c)(1). Those phrases, however, typically are used to describe the same amount and generally have the same meaning. The term ''principal,'' in certain contexts, sometimes may mean only the portion of the total credit extended that is applied to the consumer's primary purpose, such as purchasing the home or paying off the existing balance, in the case of a refinancing. When used in this sense, the ''amount of the principal'' might represent only a portion of the amount of credit extended, for example where the consumer also borrows additional amounts to cover transaction costs. However, the Bureau does not believe that Congress intended ''amount of the principal'' in this narrower, less common way, because the exception appears intended to accommodate existing industry practices, under which loan originators generally are compensated based on the total amount of credit extended without regard to the purposes to which any portions of that amount may be applied.

For the foregoing reasons, pursuant to its authority under TILA section 105(a) to facilitate compliance with TILA, the Bureau proposed to retain the phrase ''amount of credit extended'' in § 1026.36(d)(1)(ii) instead of replacing it with the statutory phrase ''amount of the principal.'' The Bureau believed that using the same phrase that is in the existing regulatory language will ease compliance burden without diminishing the consumer protection afforded by § 1026.36(d) in any foreseeable way. Creditors already have developed familiarity with the term ''amount of credit extended'' in complying with the existing regulation. The Bureau solicited comment on its proposal to keep the existing regulatory language in place and its assumptions underlying the proposal.

[112] As noted earlier, numerous questions by industry to the Board and the Bureau precipitated the Bureau issuing CFPB Bulletin 2012–2 and clarifying these issues in this rulemaking.

[113] For similar reasons, the Bureau has also not made any changes to the proposal based on comments requesting the Bureau exempt certain institutions from the effect of § 1026.36(d), such as those with under $1 billion in assets and those that keep their loans in portfolio. The commenters provided little to no evidence about why they should be exempt and the factors that would mitigate the steering incentives this rule addresses.

[114] As noted earlier, 12 CFR 701.21(c)(8)(i) generally prohibits officials or employees and their immediate family members from receiving, ''directly or indirectly, any commission, fee or other compensation in connection with any loan made by the credit union.'' 12 CFR 701.21(c)(8)(iii) provides that such prohibition does not cover, in relevant part: (1) an incentive or bonus to an employee based on the credit union's overall financial performance; and (2) an incentive or bonus to an employee in connection with a loan or loans made by the credit union, provided that the board of directors establishes written policies and internal controls for such incentives or bonuses.

[115] In some cases, the Bureau's response to the comments summarized above regarding comment 36(d)(1)–1.ii is subsumed into the section-by-section analysis of § 1026.36(d)(1)(iii) and (iv) because of the topic overlap.

The Bureau did not receive comment on this aspect of the proposal. For the reasons described above, this final rule retains the phrase ''amount of credit extended'' in § 1026.36(d)(1)(ii) as proposed.

Fixed percentage with minimum and maximum dollar amounts. Section 1026.36(d)(1)(ii) currently provides that loan originator compensation paid as a fixed percentage of the amount of credit extended may be subject to a minimum or maximum dollar amount. In contrast, TILA section 129B(c)(1), as added by section 1403 of the Dodd-Frank Act, permits mortgage originators to receive (and a person to pay the mortgage originator) compensation that varies based on the ''amount of the principal'' of the loan, without addressing the question of whether such compensation may be subject to minimum or maximum limits. 12 U.S.C. 1639b(c)(1). Pursuant to its authority under TILA section 105(a) to facilitate compliance with TILA, the Bureau proposed to retain the existing restrictions in § 1026.36(d)(1)(ii) governing when loan originators are permitted to receive (and when persons are permitted to pay loan originators) compensation that is based on the amount of credit extended. Specifically, proposed § 1026.36(d)(1)(ii) continued to provide that the amount of credit extended is not deemed to be a transaction term, provided compensation received by or paid to a loan originator is based on a fixed percentage of the amount of credit extended; however, such compensation may be subject to a minimum or maximum dollar amount. The Bureau also proposed to retain existing comment 36(d)(1)–9, which provides clarification regarding this provision and an example of its application.

The Bureau received comments on this aspect of the proposal from two industry commenters and one consumer group commenter, and those comments favored the proposal. This final rule retains § 1026.36(d)(1)(ii) as proposed. The Bureau believes that permitting creditors to set a minimum and maximum dollar amount is consistent with, and therefore furthers the purposes of, the statutory provision allowing compensation based on a percentage of the principal amount, consistent with TILA section 105(a). As noted above, the Bureau believes the purpose of excluding the principal amount from the ''terms'' on which compensation may not be based is to accommodate common industry practice. The Bureau also believes that, for some creditors, setting a maximum and minimum dollar amount also is common and appropriate because, without such limits, loan originators may be unwilling to originate very small loans and could receive unreasonably large commissions on very large loans. The Bureau therefore believes that, consistent with TILA section 105(a), permitting creditors to set minimum and maximum commission amounts may facilitate compliance and also may benefit consumers by ensuring that loan originators have sufficient incentives to originate particularly small loans.

In addition, comment 36(d)(1)–9 currently clarifies that § 1026.36(d)(1) does not prohibit an arrangement under which a loan originator is compensated based on a percentage of the amount of credit extended, provided the percentage is fixed and does not vary with the amount of credit extended. The comment also clarifies that compensation that is based on a fixed percentage of the amount of credit extended may be subject to a minimum or maximum dollar amount, as long as the minimum and maximum dollar amounts do not vary with each credit transaction. The comment provides as an example that a creditor may offer a loan originator 1 percent of the amount of credit extended for all loans the originator arranges for the creditor, but not less than $1,000 or greater than $5,000 for each loan. On the other hand, as comment 36(d)(1)–9 clarifies, a creditor may not compensate a loan originator 1 percent of the amount of credit extended for loans of $300,000 or more, 2 percent of the amount of credit extended for loans between $200,000 and $300,000, and 3 percent of the amount of credit extended for loans of $200,000 or less. For the same reasons discussed above, consistent with TILA section 105(a), the Bureau believes this interpretation is consistent with and furthers the statutory purposes of TILA. To the extent a creditor seeks to avoid disincentives to originate small loans and unreasonably high compensation amounts on larger loans, the Bureau believes the ability to set minimum and maximum dollar amounts meets such goals. The Bureau therefore is adopting comment 36(d)(1)–9 as proposed.

Reverse mortgages. Industry representatives have asked what the phrase ''amount of credit extended'' means in the context of closed-end reverse mortgages. Under the FHA's Home Equity Conversion Mortgage (HECM) program, a creditor calculates a ''maximum claim amount,'' which is the appraised value of the property, as determined by the appraisal used in underwriting the loan, or the applicable FHA loan limit, whichever is less. *See* 24 CFR 206.3. For HECM loans, the creditor then calculates the maximum dollar amount the consumer is authorized to borrow (typically called the ''initial principal limit'') by multiplying the ''maximum claim amount'' by an applicable ''principal limit factor,'' which is calculated based on the age of the youngest borrower and the interest rate. The initial principal limit sets the maximum proceeds available to the consumer for the reverse mortgage. For closed-end HECM reverse mortgages, a consumer borrows the initial principal limit in a lump sum at closing. There can also be payments from the loan proceeds on behalf of the consumer such as to pay off existing tax liens.

Reverse mortgage creditors have requested guidance on whether the maximum claim amount or the initial principal limit is the ''amount of credit extended'' in the context of closed-end HECM reverse mortgages. The Bureau indicated in the proposal that it believes that the initial principal limit is the most analogous amount to the amount of credit extended on a traditional ''forward'' mortgage. Thus, consistent with Dodd-Frank Act section 1403 and pursuant to its authority under TILA section 105(a) to facilitate compliance with TILA, the Bureau proposed to add comment 36(d)(1)–10 to provide that, for closed-end reverse mortgage loans, the ''amount of credit extended'' for purposes of § 1036.36(d)(1) means the maximum proceeds available to the consumer under the loan, which is the initial principal limit on a HECM loan.

The Bureau received only one comment on this proposed revision, and that commenter, an industry trade group that represents the reverse mortgage industry, favored the proposal. The trade group supported the proposal but noted that the terms ''maximum claim amount,'' ''principal limit factor,'' and ''initial principal limit'' used by the Bureau in the supplementary information to the proposal are primarily HECM terms and are not terms used universally with all reverse mortgage programs. This trade group also requested that the Bureau expressly state in the commentary that maximum claim amount is not a proxy for a loan term under § 1026.36(d)(1).

This final rule revises proposed comment 36(d)(1)–10 to provide that for closed-end reverse mortgages, the ''amount of credit extended'' for purposes of § 1026.36(d)(1) means either (1) the maximum proceeds available to the consumer under the loan; or (2) the maximum claim amount as defined in 24 CFR 206.3 if the loan is a HECM loan or the appraised value of the property, as determined by the appraisal used in underwriting the loan, if the loan is not a HEMC loan. Upon further analysis, the Bureau believes that it is appropriate to consider these additional values to be the ''amount of credit extended'' for a closed-end reverse mortgage, as applicable, for purposes of § 1026.36(d)(1). While the maximum proceeds available to the consumer will be the amount of proceeds that the consumer borrows at consummation, the maximum claim amount on a HECM loan will be the maximum future value of the loan to investors at repayment, including compounded interest. For non-HECM loans, this final rule allows creditors to consider the appraised value of the property, as determined by the appraisal used in underwriting the loan, to be considered the ''amount of credit extended.'' The Bureau believes that the final rule gives additional flexibility to creditors, without raising concerns that a creditor could manipulate the ''amount of credit extended'' in order to produce greater compensation to the loan originator.

36(d)(1)(iii)

Consumer Payments Based on Transaction Terms

TILA section 129B(c)(1), which was added by section 1403 of the Dodd-Frank Act, provides that mortgage originators may not receive (and no person may pay to mortgage originators), directly or indirectly, compensation that varies based on the terms of the loan (other than the amount of principal). 12 U.S.C. 1639b(c)(1). Thus, TILA section 129B(c)(1) imposes a ban on compensation that varies based on loan terms even in transactions where the mortgage originator receives compensation directly from the consumer. For example, under the amendment, even if the only compensation that a loan originator receives comes directly from the consumer, that compensation may not vary based on the loan terms.

As discussed above, § 1026.36(d)(1) currently provides that no loan originator may receive, and no person may pay to a loan originator, compensation based on any of the transaction's terms or conditions, except in transactions in which a loan originator receives compensation directly from the consumer and no other person provides compensation to a loan originator in connection with that transaction. Thus, even though, in accordance with § 1026.36(d)(2), a loan originator organization that receives compensation from a consumer may not split that compensation with its individual loan originator, existing § 1026.36(d)(1) does not prohibit a consumer's payment of compensation to the loan originator organization from being based on the transaction's terms or conditions.

Consistent with TILA section 129B(c)(1), the Bureau proposed to remove existing § 1026.36(d)(1)(iii) and a related sentence in existing comment 36(d)(1)–7. Thus, transactions where a loan originator receives compensation directly from the consumer would no longer be exempt from the prohibition set forth in § 1026.36(d)(1)(i). As a result, whether the consumer or another person, such as a creditor, pays a loan originator compensation, that compensation may not be based on the terms of the transaction. Comment 36(d)(1)–7 addresses when payments to a loan originator are considered compensation received directly from the consumer. The Bureau proposed to remove the first sentence of this comment and move the other content of this comment to new comment 36(d)(2)(i)–2.i.

The Bureau did not receive comments on its proposal to remove § 1026.36(d)(1)(iii). The Bureau did receive comments on the ability of loan originator organizations to make pricing concessions in the amounts of compensation they receive in individual transactions, including in transactions where these organizations receive compensation directly from consumers, as discussed in the section-by-section analysis of § 1026.36(d)(1)(i). For the reasons discussed above, this final rule removes existing § 1026.36(d)(1)(iii) as proposed.

The Bureau also did not receive any comments on deleting the first sentence of comment 36(d)(1)–7 and moving the other content of that comment to new comment 36(d)(2)(i)–2.i. The Bureau did receive one comment on the substance of proposed comment 36(d)(2)(i)–2.i, which is discussed in the section-by-section analysis of § 1026.36(d)(2). This final rule deletes the first sentence of comment 36(d)(1)–7, moves the other content of that comment to new comment 36(d)(2)(i)–2.i, and makes revisions to this other content as discussed in the section-by-section analysis of § 1026.36(d)(2).

Designated Tax-Advantaged Plans and Non-Deferred Profits-Based Compensation Plans

The Bureau proposed a new § 1026.36(d)(1)(iii), which would permit the payment of compensation that is directly or indirectly based on the terms of transactions of multiple individual loan originators in limited circumstances. In this final rule, the language in § 1026.36(d)(1)(iii) has been revised to focus specifically on designated tax-advantaged plans and a new § 1026.36(d)(1)(iv) has been added to address non-deferred profits-based compensation plans as discussed further below.

Designated Tax-Advantaged Plans. As noted above, following a number of inquiries about how the restrictions in the existing regulation apply to qualified retirement plans and other bonus and profit-sharing plans, the Bureau issued CFPB Bulletin 2012–2 stating that contributions to certain qualified plans out of loan origination profits were permissible under the existing rules.[116] The Bureau's position was based in part on certain structural and operational requirements that the Internal Revenue Code imposes on qualified plans, including contribution and benefit limits, deferral requirements (regarding both access to and taxation of the funds contributed), additional taxes for early withdrawal, non-discrimination provisions, and requirements to allocate among plan participants based on a definite allocation formula. Consistent with its position in CFPB Bulletin 2012–2, the Bureau stated in the proposal that it believed these structural and operational requirements would greatly reduce the likelihood that firms would use such plans to provide steering incentives.

Based on these considerations, proposed § 1026.36(d)(1)(iii) would have permitted a person to compensate an individual loan originator through a contribution to a qualified defined contribution or defined benefit plan in which an individual loan originator participates, provided that the contribution would not be directly or indirectly based on the terms of that individual loan originator's transactions. Proposed comments 36(d)(1)-2.iii.B and 36(d)(1)-2.iii.E would have discussed the meaning of qualified plans and other related terms as relevant to the proposal. Additionally, the Bureau solicited comment on whether any other types of retirement plans, profit-sharing plans, or other tax-advantaged plans should be treated similarly for purposes of permitting contributions to such plans, even if the compensation relates directly or indirectly to the transaction terms of multiple individual loan originators.

Industry commenters generally supported the Bureau's proposal to permit creditors and loan originator organizations to contribute to individual

[116] CFPB Bulletin 2012–2 defined ''Qualified Plans'' to include ''qualified profit sharing, 401(k), and employee stock ownership plans.''

loan originators' qualified plan accounts even if the contributions were based directly or indirectly on the terms of multiple individual loan originators' transactions. For example, a national trade association representing banking institutions wrote that it especially welcomed the ''clean and straightforward'' proposed clarifications regarding qualified plans. A national trade association representing mortgage lenders appreciated the clarification that contributions to the qualified plan accounts of individual loan originators would be permitted. A financial holding company commented that the proposal to allow contributions to qualified plans was necessary for creditors to adequately compensate their individual loan originators.

Several industry commenters, however, questioned certain aspects of how the Bureau proposed treating qualified plans under proposed § 1026.36(d)(1)(iii). A group commenting on behalf of community mortgage lenders wrote that the IRS governing rules and regulations regarding qualified retirement plans should govern whether any employees, including loan originators, should be eligible to participate in qualified plans. The commenter stated that any exclusion of a class of employees from a qualified plan would render the plan non-qualified under IRS regulations. A large mortgage lending company wrote that the Bureau's attempt to regulate employee benefit plans was complicated, fraught, and imposed unspecified ''conditions'' on the use of qualified plans. Another commenter specifically objected to the language in proposed § 1026.36(d)(1)(iii) requiring that the contribution to a qualified plan ''not be directly or indirectly based on the terms of that individual loan originator's transactions.'' The commenter reasoned that these restrictions would interfere with other agencies' regulation of qualified plans and could cause employers to incur penalties under other regulations and statutes, which must be accounted for in pricing risk and could increase the costs of credit. One trade association expressed concern that smaller creditors would be disadvantaged by a rule that treats qualified plans more permissively than non-qualified plans because qualified plans can be prohibitively expensive and smaller creditors thus would likely be unable to take advantage of the exception in § 1026.36(d)(i)(iii).

SBA Advocacy commented that the Bureau should analyze the incentive issues arising from qualified plans before issuing clarifications on existing regulations or proposing new regulations. SBA Advocacy also reminded the Bureau of comments to this effect made by Small Entity Representatives during the Small Business Review Panel process.

Consumer groups commenting on the proposal did not specifically address qualified plans. They stated as a general matter, however, that permitting compensation to loan originators based on the terms of a transaction would be in contravention of the Dodd-Frank Act and would make loan originator compensation even less transparent to consumers. Three consumer groups, in a joint letter, commented that bonuses and retirement plan contributions change the behavior of individual loan originators and that permitting compensation from profit pools would not remove the danger that individual loan originators would seek to originate transactions with abusive terms to boost their overall compensation packages. These consumer groups also commented that allowing individual loan originators to profit from compensation based on aggregate terms of transactions they originate, such as higher interest rates, presents the same risks to consumers as allowing individual loan originators to profit from compensation based on terms in a single transaction. As discussed above, a housing advocacy organization expressed its concern that the exceptions in the proposed regulation would lead to a resurgence of the same individual compensation-driven loan origination tactics that were the subject of U.S. Department of Justice actions, later settled, that alleged steering of minority borrowers into subprime mortgages.

An organization submitting comments on behalf of State bank supervisors wrote that, as a general matter, adjustments to existing loan originator compensation rules for purposes of clarity and coherence are appropriate because existing standards can be difficult for regulators and consumers to interpret. The organization further stated that qualified plans are one of the primary areas under the rule that needs clarification, and it endorsed the Bureau's proposal to permit contributions to qualified plans.

The Bureau is finalizing the proposal's treatment of ''qualified plans'' (now referred to as ''designated tax-advantaged plans'' in § 1026.36(d)(1)(iii) and as that term or, alternatively, ''designated plans'' in this preamble) with limited substantive changes to clarify what plans can be exempted from the baseline prohibition in § 1026.36(d)(1)(i) of compensation that is based on the terms of multiple transactions of multiple individual loan originators. Section 1026.36(d)(1)(iii), as clarified by comment 36(d)(1)-3.i, provides that an individual loan originator may receive, and a person may pay to an individual loan originator, compensation in the form of a contribution to a defined contribution plan that is a designated tax-advantaged plan or a benefit under a defined benefit plan that is a designated tax-advantaged plan, even if the contribution or benefit, as applicable, is directly or indirectly based on the terms of the transactions of multiple individual loan originators. In the case of a contribution to a defined contribution plan, however, § 1026.36(d)(1)(iii) provides that the contribution must not be directly or indirectly based on the terms of that individual loan originator's transactions.

The final rule adds language to § 1026.36(d)(1)(iii) similar to what was previously proposed in commentary and also to define ''designated tax-advantaged plans.'' Specifically, § 1026.36(d)(1)(iii) defines the term to include any plan that meets the requirements of Internal Revenue Code section 401(a), 26 U.S.C. 401(a); employee annuity plans described in Internal Revenue Code section 403(a), 26 U.S.C. 403(a); simple retirement accounts, as defined in Internal Revenue Code section 408(p), 26 U.S.C. 408(p); simplified employee pensions described in Internal Revenue Code section 408(k), 26 U.S.C. 408(k); annuity contracts described in Internal Revenue Code section 403(b), 26 U.S.C. 403(b); and eligible deferred compensation plans, as defined in Internal Revenue Code section 457(b), 26 U.S.C. 457(b). The term ''designated tax-advantaged plan'' corresponds to the proposed term ''qualified plan,'' and the set of plans that qualify as ''designated'' plans under the final rule is largely the same as those that were ''qualified'' as described in proposed comment 36(d)(1)–2.iii.E.

The Bureau has, however, also substantially reorganized and clarified the proposed commentary. In particular, proposed comment 36(d)(1)–2.iii has been moved into a new comment 36(d)(1)–3 and restructured for internal consistency and clarity. New comment 36(d)(1)–3 clarifies that designated tax-advantaged plans are permitted even if the compensation is directly or indirectly based on the terms of multiple transactions of multiple individual loan originators. This language clarifies that § 1026.36(d)(1)(iii) (as well as § 1026.36(d)(1)(iv), which is discussed further below with regard to non-deferred profits-based compensation plans) permits certain types of compensation that are otherwise prohibited under § 1026.36(d)(1)(i). This is a technical change to improve on the consistency of the proposal's language.

There are two categories of designated tax-advantaged plans: (1) Designated defined contribution plans; and (2) designated defined benefit plans. Comment 36(d)(1)–3.i explains that the Bureau uses these terms as defined in section 414 of the Internal Revenue Code, 26 U.S.C. 414. Thus, a ''defined contribution plan'' is one ''which provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account.'' 26 U.S.C. 414(i). Any plans that do not meet this definition are called defined benefit plans. 26 U.S.C. 414(j).

Under the final rule, the Bureau permits individual loan originators to participate in designated defined contribution plans, provided that contributions to these plans are not based on the terms of the specific transactions of each individual loan originator, pursuant to § 1026.36(d)(1)(iii). The Bureau recognizes, as expressed by industry commenters, that creditors, loan originator organizations, and individual loan originators derive substantial benefits from being able to establish and participate in designated defined contributions plans. These types of plans provide specific tax advantages for employees saving for their eventual retirement, are commonly used across many markets and made available to employees across many income classes, and in a given firm generally are made equally available to employees across different job categories. The final rule permits individual loan originators to participate in these plans because the Bureau believes that certain structural, legal, and operational features of designated defined contribution plans, combined with the additional restriction of § 1026.36(d)(1)(iii), will significantly reduce the likelihood that participation in these plans will provide individual loan originators substantial incentives to steer consumers.

First, withdrawals from designated defined contribution plans are subject to time deferral requirements, and tax penalties generally apply to early withdrawals.[117] The fact that individual loan originators may not receive funds contributed to a designated defined contribution plan for years (or even decades) without paying an additional tax for early withdrawal reduces the incentive for an individual loan originator to steer consumers because the potential benefit from the potential steering can be so remote in time. Second, designated defined contribution plans are subject to limits in the Internal Revenue Code on the contributions to any individual participant's account.[118] This further reduces the degree to which a designated defined contribution plan can give an individual loan originator an incentive to steer simply to increase general company profits. Third, to maintain their tax-advantaged status, these plans are subject to a variety of rules under the Internal Revenue Code that limit their potential use as steering incentives and complement and buttress the anti-steering protections of § 1026.36(d)(1)(iii). These may include, for example, depending on the type of plan, rules about the manner in which contributions are allocated to participants and prohibitions on discriminating between highly-compensated employees and other employees.

Section 1026.36(d)(1)(iii) also permits participation in the second category of designated tax-advantaged plans, which are defined benefit plans. In this final rule, however, the Bureau has not applied additional restrictions on benefits payable under defined benefit plans as it has done in § 1026.36(d)(1)(iii) with regard to contributions under defined contribution plans, as described above. A defined benefit plan differs from a defined contribution plan in that, under the former, a participant's benefits depend on factors other than amounts contributed to an account established for that individual participant (and the investment returns and expenses on such amounts). Commonly, benefits are paid to individuals at retirement or another point of eligibility based on a benefits formula. Indeed, employer contributions to a defined benefit plan are generally made to the plan as a whole, rather than being allocated to the accounts of individual participants. For these reasons, the Bureau believes that defined benefit plans further attenuate any potential steering incentives a firm might try to incorporate in a defined benefit plan. In addition, attempts by creditors or loan originator organizations to structure such plans to take into account the terms of the transactions of the individual loan originators participating in the plans would likely present considerable regulatory obstacles. The Bureau is continuing to study the structural differences in plan type and will issue additional guidance or restrictions in the future that are specific to the particular structures of defined benefit plans as necessary and appropriate to effectuate the intent of the Dodd-Frank Act in prohibiting steering incentives.

The Bureau disagrees with the few commenters who suggested that the Bureau's proposal places unwarranted restrictions on the use of designated plans that potentially conflict with other Federal regulations and adds uncertainty regarding an individual loan originator's eligibility to participate in a designated plan. To the contrary, § 1026.36(d)(1)(iii) explicitly contemplates that individual loan originators may participate in a designated plan. The creditor or loan originator organization would be free, to the extent permitted by other applicable law, to match an individual loan originator's contribution to a designated plan account or pay a fixed percentage of the individual loan originator's compensation in the form of a contribution to a designated plan account.

The rule simply prohibits a creditor or loan originator organization from basing the amount of contributions to an individual loan originator's designated plan account, in the case of a defined contribution plan, on the terms of that individual loan originator's transactions. The Bureau believes that implementing the statutory prohibition on compensation based on the terms of the loan under section 1403 of the Dodd-Frank Act requires a regulation that prohibits this practice. Compensating any individual loan originator more based on the terms of his or her transactions is a core, direct danger that the statute and this final rule are designed to counteract. The Bureau is not convinced that the structure or operation of designated defined contribution plans would sufficiently mitigate the steering incentives an employer could create by using such a practice. Moreover, the Bureau is not aware of any conflict

[117] *See, e.g.,* 26 U.S.C. 72(t).

[118] For example, for certain types of plan, contributions to an individual loan originator's account are generally limited to the lesser of 100 percent of the individual loan originator's yearly compensation (as defined in Internal Revenue Code section 415(c)(3)) or an annual dollar amount ($51,000 for 2013), which the IRS adjusts each year to account for inflation. *See* 26 U.S.C. 415(c); IRS Publication 560 at 15; Internal Revenue Service Web site, ''IRS Announces 2013 Pension Plan Limitations; Taxpayers May Contribute Up To $17,500 To Their 401(k) Plans in 2013,'' *http://www.irs.gov/uac/2013-Pension-Plan-Limitations* (last accessed Dec. 17, 2012) (IRS 2013 Qualified Plan Adjustments). The annual cap includes the employee contributions, *see* 26 U.S.C. 415(c).), which may be subject to a separate annual limit.

between this final rule and other applicable Federal laws and regulations (*e.g.,* the Internal Revenue Code and its implementing regulations) that would prevent compliance with all applicable legal requirements.

Non-Deferred Profits-Based Compensation Plans. In addition to addressing qualified plans as described above, proposed § 1026.36(d)(1)(iii) would have provided that, notwithstanding § 1026.36(d)(1)(i), an individual loan originator may receive, and a person may pay to an individual loan originator, compensation in the form of a bonus or other payment under a profit-sharing plan or a contribution to some other form of non-qualified plan even if the compensation directly or indirectly was based on the terms of the transactions of multiple individual loan originators, provided that the conditions set forth in proposed § 1026.36(d)(1)(iii)(A) and (B) were satisfied. Proposed § 1026.36(d)(1)(iii)(A) would have prohibited payment of compensation to an individual loan originator that directly or indirectly was based on the terms of that individual loan originator's transaction or transactions. The Bureau explained in the section-by-section analysis of the proposal that this language was intended to prevent a person from paying compensation to an individual loan originator based on the terms of that individual loan originator's transactions regardless of whether the compensation would otherwise be permitted in the limited circumstances under § 1026.36(d)(1)(iii)(B).

Proposed § 1026.36(d)(1)(iii)(B)(*1*) would have permitted compensation in the form of a bonus or other payment under a profit-sharing plan or a contribution to a non-qualified plan, even if the compensation related directly or indirectly to the terms of the transactions of multiple individual loan originators, provided: (1) The conditions set forth in proposed § 1026.36(d)(1)(iii)(A) were met; and (2) not more than a certain percentage of the total revenues of the person or business unit to which the profit-sharing plan applies, as applicable, were derived from the person's mortgage business during the tax year immediately preceding the tax year in which the compensation is paid. The Bureau proposed two alternatives for the threshold percentage—50 percent, under Alternative 1, or 25 percent, under Alternative 2. The approach set forth under proposed § 1026.36(d)(1)(iii)(B)(*1*) is sometimes referred to as the ''revenue test.''

The Bureau explained in the proposal that to meet the conditions under proposed § 1026.36(d)(1)(iii)(B)(*1*), a person would measure the revenue of its mortgage business divided by the total revenue of the person or business unit, as applicable.[119] Proposed § 1026.36(d)(1)(iii)(B)(*1*) also would have addressed how total revenues are determined,[120] when the revenues of a person's affiliates are or are not taken into account, and how total revenues derived from the mortgage business are determined.[121] Proposed comment 36(d)(1)–2.iii would have provided additional interpretation of the terms ''total revenue,'' ''mortgage business,'' and ''tax year'' [122] used in proposed § 1026.36(d)(1)(iii)(B)(*1*).

Proposed comment 36(d)(1)–2.iii.A would have clarified that the term ''profit-sharing plans'' includes ''bonus plans,'' ''bonus pools,'' or ''profit pools'' from which individual loan originators are paid bonuses or other compensation with reference to company or business unit profitability, as applicable. The proposed comment also would have noted that a bonus made without reference to profitability, such a retention payment budgeted for in advance, would not violate the prohibition on compensation based on transaction terms. Proposed comment 36(d)(1)–2.iii.C would have clarified that compensation is ''directly or indirectly based'' on the terms of multiple transactions of multiple individual loan originators when the compensation, or its amount, results from or is otherwise related to the terms of multiple transactions of multiple individual loan originators. The proposed comment would have provided that, if a creditor did not permit its individual loan originators to deviate from the creditor's pre-established credit terms, such as the interest rate offered, then the creditor's payment of a bonus at the end of a calendar year to an individual loan originator under a profit-sharing plan would not be related to the transaction terms of multiple individual loan originators. The proposed comment also would have clarified that, if a loan originator organization whose revenues were derived exclusively from fees paid by the creditors that fund its originations pays a bonus under a profit-sharing plan, the bonus would be permitted. Proposed comment 36(d)(1)–2.iii.D would have clarified that, under proposed § 1026.36(d)(1)(iii), the time period for which the compensation was paid is the time period for which the individual loan originator's performance was evaluated for purposes of the compensation decision (*e.g.,* calendar year, quarter, month), whether the compensation was actually paid during or after that time period.

In the proposal, the Bureau explained that the revenue test was intended as a bright-line rule to distinguish circumstances in which a compensation plan creates a substantial risk of consumers being steered to particular transaction terms from circumstances in which a compensation plan creates only an attenuated incentive and risk of steering. The Bureau also explained that the proposal would treat revenue as a proxy for profitability and profitability as a proxy for terms of multiple transactions of multiple individual loan originators. Furthermore, the Bureau stated that it was proposing a threshold of 50 percent because, if more than 50 percent of the person's total revenues were derived from the person's mortgage business, the mortgage business revenues would predominate, which would increase the likelihood of

[119] Proposed comment 36(d)(1)–2.iii.G.*1* would have clarified that, under the proposed revenue test, whether the revenues of the person or business unit would be used would depend on the level within the person's organizational structure at which the profit-sharing plan was established and whose profitability was referenced for purposes of compensation payment.

[120] Proposed § 1026.36(d)(1)(iii)(B)(*1*) would have provided that total revenues would be determined through a methodology that: (1) Is consistent with generally accepted accounting principles and, as applicable, the reporting of the person's income for purposes of Federal tax filings or, if none, any industry call reports filed regularly by the person; and (2) as applicable, reflects an accurate allocation of revenues among the person's business units. The Bureau solicited comment on: (1) Whether this standard would be appropriate in light of the diversity in size of the financial institutions that would be subject to the requirement and, more generally, on the types of income that should be included; and (2) whether the definition of total revenues should incorporate a more objective standard.

[121] Section 1026.36(d)(1)(iii)(B)(*1*) would have provided that the revenues derived from mortgage business are the portion of those total revenues that are generated through a person's transactions that are subject to § 1026.36(d). Proposed comment 36(d)(1)–2.iii.G would have explained that a person's revenues from its mortgage business include, for example: Origination fees and interest associated with loans for purchase money or refinance purposes originated by individual loan originators employed by the person, income from servicing of loans for purchase money or refinance purposes originated by individual loan originators employed by the person, and proceeds of secondary market sales of loans for purchase money or refinance purposes originated by individual loan originators employed by the person. The proposed comment also would have noted certain categories of income and fees that would not be included under the definition of mortgage-related revenues, such as servicing income where the loans being serviced were purchased by the person after their origination by another person. The Bureau requested comment on the scope of revenues included in the definition of mortgage revenues.

[122] Proposed comment 36(d)(1)–2.iii.G.*1* would have clarified that a tax year is the person's annual accounting period for keeping records and reporting income and expenses.

steering incentives. The Bureau recognized, however, that a bright-line rule with a 50 percent revenue test threshold might still permit steering incentives in light of the differing sizes, organizational structures, and compensation structures of the persons affected by the proposed rule. The Bureau thus proposed an alternative threshold of 25 percent and more generally solicited comment on which threshold would best effectuate the purposes of the rule.

The Bureau also sought comment on the effect of this proposed provision on small entities. The Bureau stated in the proposal that it was aware of the potential differential effects the revenue test may have on small creditors and loan originator organizations that employ individual loan originators—particularly those institutions that originate mortgage loans as their exclusive, or primary, line of business (hereinafter referred to as ''monoline mortgage businesses'')—when compared to the effects on larger institutions that are more likely to engage in multiple business lines. In the proposal, the Bureau noted the feedback it had received during the Small Business Review Panel process regarding these issues.

The Bureau discussed in the proposal three possible alternative approaches to the revenue test in proposed § 1026.36(d)(1)(iii)(B)(*1*). First, the Bureau solicited comment on whether the formula under § 1026.36(d)(1)(iii)(B)(*1*) should be changed from the consideration of revenue to a consideration of profits. Under this profits test, total profits of the mortgage business would be divided by the total profits of the person or business unit, as applicable. The Bureau further solicited comment on how profits would be calculated if a profits test were adopted. The Bureau stated that it was soliciting comment on this approach because the test's use of revenue and not profits may result in an improper alignment with the steering incentives to the extent that it would be possible for a company to earn a large portion of its profits from a proportionally much smaller mortgage-business-related revenue stream.[123] But the Bureau stated that it recognized that a profits test would create definitional challenges and could lead to evasion if a person were to allocate costs in a manner across business lines that would understate mortgage business profits for purposes of the profits test.

Second, the Bureau solicited comment on whether to establish a ''total compensation'' test either in addition to or in lieu of the proposed revenue test. The total compensation test would cap the percentage of an individual loan originator's total compensation that could be attributable to the types of compensation addressed by the proposed revenue test (*i.e.,* bonuses under profit-sharing plans and contributions to non-qualified plans). The Bureau also solicited comment on the appropriate threshold amount if the Bureau were to adopt a total compensation test. The Bureau solicited comment on the total compensation test because it believed the proportion of an individual loan originator's total compensation that is attributable to mortgage-related business would provide one relatively simple and broadly accurate metric of the strength of individual loan originators' steering incentives.

Third, the Bureau solicited comment on whether it should include an additional provision under § 1026.36(d)(1)(iii)(B) that would permit bonuses under a profit-sharing plan or contributions to non-qualified plans where the compensation bears an ''insubstantial relationship'' to the terms of multiple transactions of multiple individual loan originators. The Bureau solicited comment on this approach because it recognized that the terms of multiple individual loan originators' transactions taken in the aggregate would not, in every instance, have a substantial effect on profitability. The Bureau stated, however, that any test would likely be both under- and over-inclusive, and it was unclear how such a test would work in practice and what standards would apply to determine if compensation bore an insubstantial relationship to the terms of multiple transactions of multiple individual loan originators.

Consumer groups generally criticized the revenue test as too permissive with regard to payment of compensation through profit-sharing bonuses or contributions to non-qualified plans. A coalition of consumer groups stated that the revenue test would merely create a ''back door,'' whereby there would be indirect incentives to promote certain credit terms for an individual loan originator's personal gain. They urged the Bureau to restrict all profit-sharing bonuses or contributions to non-qualified plans to those based on volume of mortgages originated. One consumer advocacy organization, however, supported the revenue test with a 25 percent threshold. This commenter asserted that the larger the percentage of revenue derived from a company's mortgage lending unit, the more opportunity would exist for the mortgage unit to skew the results of the overall pool of funds available for distribution as profit-sharing bonuses or contributions to non-qualified plans.

Industry commenters, including small and large institutions and trade associations, nearly unanimously urged the Bureau not to finalize the revenue test. Industry opposition arose primarily for three reasons. First, many industry commenters asserted that the revenue test was unduly complex and would be very difficult to implement. Two large financial institutions stated that large creditors would face challenges in calculating total revenue and mortgage-related revenues under the revenue test if the creditor had different origination divisions or affiliates or typically aggregated closed-end and open-end transaction revenues. A national trade association representing community banks stated that community banks would have faced difficultly complying with the revenue test based on the proposed requirement that the determination of total revenue be consistent with the reporting of Federal tax filings and industry call reports, because, the association stated, revenue from various business units is not separated out in bank ''call reports,'' and mortgage revenue comes from multiple sources. One commenter asserted that the terminology was confusing, citing the example of the proposal using the phrase ''profit-sharing plan'' to refer to profit pools and bonus pools in the non-qualified plan context when such phrase has a commonly understood meaning in the context of qualified plans.

Second, numerous industry commenters asserted that application of the revenue test would have a disparate negative impact on monoline mortgage businesses. These businesses, the commenters stated, would not be able to pay profit-sharing bonuses or make contributions to non-qualified plans because, under the revenue test, their mortgage-related revenue would always exceed 50 percent of total revenues. A trade association representing community mortgage bankers commented that the revenue test would favor large institutions that have alternate sources of income outside mortgage banking. Another trade

[123] The Bureau posited an example where a company could derive 40 percent of its total revenues from its mortgage business, but that same line of business may generate 80 percent of the company's profits. In such an instance, the steering incentives could be significant given the impact the mortgage business has on the company's overall profitability. Yet, under the proposed revenue test this organization would be permitted to pay certain compensation based on terms of multiple individual loan originators' transactions taken in the aggregate.

association asserted that the revenue test would place smaller businesses at a competitive disadvantage for recruiting and retaining talented loan originators. A law firm that represents small and medium-sized financial institutions expressed particular concern about the impact of the revenue test on small entities, citing data from briefing materials circulated by the Bureau during the Small Business Review Panel process that a majority of small savings institutions would fail the revenue test if it were set at the higher proposed threshold of 50 percent.[124] This commenter also asserted that a ''not insubstantial number'' of savings institutions with between $175 million and $500 million in assets would also fail the revenue test if the threshold were set at 50 percent. One financial holding company stated that the revenue test would have a negative impact on creditors that keep mortgage loans in portfolio, which, it stated, would likely disproportionately affect smaller creditors and community banks, because accrued interest on mortgages the creditor had originated and held over many years would count toward the calculation of mortgage-related revenues under the revenue test. The commenter urged the Bureau to craft a narrower definition of mortgage-related revenues that would capture only recent lending activity.

Third, several industry commenters expressed concern that application of the revenue test would lead to TILA liability if an accounting error in calculating total revenues or mortgage revenues resulted in bonuses being paid to loan originators improperly. A national trade association stated that none of its members would avail themselves of the revenue test because of their concern that, if the threshold percentage numbers were miscalculated, the entire pool of loans originated by that bank would be ''poisoned,'' the compensation scheme would be deemed defective, and the bank would be subject to investor repurchase demands and full TILA liability. One State banking trade association expressed concern about the personnel repercussions of rescinding bonuses that were found to have been made improperly. A trade association that represents loan originators (both organizations and individuals) expressed concern that the compensation restrictions in the revenue test would lead to ''unacceptable litigation'' for creditors and loan originators.

A compensation consulting firm commented that drawing a bright line at 50 or 25 percent would be inherently subjective, would result in inequitable treatment, and would actually create a potential incentive for companies to manipulate financial statements to fall on the permissive side of the measurement to ensure the continued payment of profit-sharing bonuses or making of contributions to non-qualified plans. The commenter asserted that this result would directly conflict with interagency guidance provided on incentive compensation policies,[125] and the commenter recommended that the Bureau instead adopt an approach modeled after the implementation of G–20 task force recommendations regarding incentive compensation.[126]

Industry commenters who expressed a preference, if the revenue test were nonetheless adopted, primarily favored a threshold of 50 percent rather than 25 percent. One large financial institution, while criticizing the complexity of the revenue test, recommended that the Bureau consider adopting it as a safe harbor. One mortgage company commenter suggested exempting organizations from the restrictions on the payment of profit-sharing bonuses and the making of contributions to non-qualified plans if they do not offer high or higher-cost mortgages and their individual loan originators have limited pricing discretion because, the commenter stated, the risk for steering of consumers would be extremely low or nonexistent.

SBA Advocacy urged the Bureau to analyze the incentive issues arising from non-qualified plans carefully before clarifying existing or proposing new regulations. SBA Advocacy reiterated concerns raised by the small entity representatives during the Small Business Review Panel process that: (1) Even if the revenue test threshold were set at 50 percent, it may not provide relief for many small businesses because their revenues are often derived predominately from mortgage originations; (2) the Bureau should consider relaxing the revenue test to exclude revenue derived from existing loans held in portfolio; (3) the Bureau should provide further clarification on the definition of revenue; and (4) the Bureau should develop a mortgage-related revenue limit that reflects the unique business structure of smaller industry members and provides relief to small entities.[127] SBA Advocacy also referenced concerns raised at its outreach roundtable that the definition was too broad and that it would be difficult to determine what is and is not compensation. SBA Advocacy further referenced concerns that if a mistake was made on the compensation structure, all loans sold on the secondary market might be susceptible to repurchase demands. SBA Advocacy discussed the suggestion by participants at its outreach roundtable of a safe harbor to prevent one violation from poisoning an entire pool of loans.

An organization writing on behalf of State bank supervisors stated that the Bureau's proposed regulatory changes

[124] *See* Consumer Fin. Prot. Bureau, *''Small Business Review Panel for Residential Mortgage Loan Origination Standards Rulemaking: Outline of Proposals under Consideration and Alternatives Considered''* 18 (May 9, 2012), *available at http://files.consumerfinance.gov/f/201205_cfpb_MLO_SBREFA_Outline_of_Proposals.pdf* (Small Business Review Panel Outline). In the Small Business Review Panel Outline, the Bureau noted that at the proposed threshold of 50 percent for the revenue test then-under consideration, 56 percent of small savings institutions whose primary business focus is on residential mortgages would have been restricted from paying bonuses based on mortgage-related profits to their individual loan originators. In the Small Business Review Panel Outline, the Bureau noted that its estimate was based on 2010 call report data, and revenue from loan originations was assumed to equal fee and interest income from 1–4 family residences as reported. The Bureau noted that to the extent that other revenue on the call reports is tied to loan originations, the numbers may be underestimated. In the proposal, the Bureau discussed the same data but updated the figure to 59 percent. See 77 FR 55272, 55347 (Sept. 7, 2012).

[125] In the proposal, the Bureau noted that incentive compensation practices at large depository institutions were the subject of final guidance issued in 2010 by the Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (Interagency Group). 75 FR 36395 (June 17, 2010) (Interagency Guidance). The Bureau wrote that the Interagency Guidance was issued to help ensure that incentive compensation policies at large depository institutions do not encourage imprudent risk-taking and are consistent with the safety and soundness of the institutions. 77 FR 55272, 55297 (Sept. 7, 2012). The Bureau stated in the proposal that the Bureau's proposed rule would not affect the Interagency Guidance on loan origination compensation. *Id.* In addition, the Bureau stated that to the extent a person is subject to both the Bureau's rulemaking and the Interagency Guidance, compliance with Bureau's rulemaking is not deemed to be compliance with the Interagency Guidance. *Id.* The Bureau reiterates these statements for purposes of this final rule. The Bureau also acknowledges that the same statements apply with respect to the proposal by the Interagency Group to implement rules consistent with the standards set forth in the Interagency Guidance. *See* 76 FR 21170 (Apr. 14, 2011). The proposal by the Interagency Group has not yet been finalized.

[126] The G–20 recommendations to which the commenter was referring appear to be the Financial Stability Forum (FSF) Principles for Sound Compensation Practices, issued in April 2009 (FSF Principles). *See http://www.financialstabilityboard.org/publications/r_0904b.pdf.* The FSF Principles were intended to ensure effective governance of compensation, alignment of compensation with prudent risk-taking and effective supervisory oversight and stakeholder engagement in compensation. *See id.* at 2.

[127] Similarly, a law firm that represents small and medium-sized banks commented that the Bureau should consider a higher threshold under the revenue test for small savings institutions.

regarding profit-sharing bonuses and contributions to non-qualified plans were largely appropriate. The organization noted, however, that enforcing standards based on thresholds for origination, such as the approach in the proposed de minimis test, could be problematic because the number of transactions originated may have differing degrees of significance in different scenarios. The organization encouraged the Bureau either to justify the threshold levels through study or to adopt a more flexible approach that could be tailored to various situations appropriately.

A few industry commenters proposed alternative approaches to the revenue test or specifically responded to alternative approaches on which the Bureau solicited comment. A trade association representing independent community banks recommended that the Bureau not finalize the revenue test and instead cap at 25 percent the percentage of an individual loan originator's total cash compensation paid during a calendar year from a non-qualified bonus plan. The association asserted that this structure would be easy to track, manage and monitor. A law firm that represents small and medium-sized banks discussed whether to permit profit-sharing bonuses or contributions to non-qualified plans where the creditor or loan originator organization can demonstrate that there is an insubstantial relationship between the compensation and the terms of multiple transactions of multiple individual loan originators. This commenter agreed with the Bureau's assertion in the proposal that this test would be difficult to implement in practice. One bank commenter, however, wrote that the marginal difference in loan originator compensation based on upcharging consumers is not a significant incentive to charge a customer a higher rate. The commenter provided an example of a loan originator receiving a $1,000 bonus of which only $20 was attributable to profit from transaction terms.

After consideration of comments received to the proposal and additional internal analysis, the Bureau has decided not to adopt the revenue test in this final rule. Based on this consideration and analysis, the Bureau believes the revenue test suffers from a variety of flaws.

First, the Bureau believes that the revenue test is not an effectively calibrated means of measuring the level of incentives present for individual loan originators to steer consumers to particular transaction terms. At a basic level, revenues would be a flawed measure of the relationship between the mortgage business and the profitability of the firm. Indeed, the Bureau believes that the revenue test would present a substantial risk of evasion. For example, if the revenue test were set at 50 percent, a creditor whose mortgage origination division generates 40 percent of the creditor's total revenues but 90 percent of the creditor's total profits could set a profit-sharing plan at the level of the entire company (rather than the mortgage business division) so that all company employees are eligible, but then pay out 90 percent of the bonuses to the individual loan originators. Although this compensation program would technically comply with the revenue test because less than 50 percent of total revenues would have been generated from mortgage business, steering incentives might still exist because individual loan originators would receive a disproportionate amount of bonuses relative to other individuals working for the creditor or loan originator organization. Moreover, firms would also have incentives to manipulate corporate structures to minimize mortgage revenues. The inherent misalignment between the revenue test and company profitability, which more directly drives decisions about compensation, would result in a rule that is both under-inclusive and over-inclusive. The revenue test's under-inclusiveness is illustrated by the example above in this paragraph. One example of the revenue test's over-inclusiveness is the effect of the revenue test on monoline mortgage businesses, discussed below. The Bureau believes that it would be difficult to fashion additional provisions for the revenue test to prevent such outcomes and any such provisions would add further complexity to a rule that as proposed was already heavily criticized for its complexity.

The Bureau believes that a test based on profitability instead of revenues, while designed to address the potential misalignment between revenues and profits discussed above, would present substantial risks. In the proposal, the Bureau solicited comment on this alternative approach, while expressing concern that using profitability as the metric could encourage firms to allocate costs across business lines to understate mortgage business profits. While revenues may be less prone to accounting manipulation than profits, a similar potential for accounting manipulation would also be present if the revenue test were adopted.

Second, the complexity of the rule also would prove challenging for industry compliance and supervision and enforcement. The Bureau is particularly mindful of the criticism by some commenters that the complexity of the proposal would have posed compliance burdens of such significance that creditors and loan originator organizations would have avoided paying profit-sharing bonuses to individual loan originators or making contributions to their non-qualified plans. Moreover, monitoring for evasion of the proposed rule would have required substantial analysis of how the company's mortgage-related revenue interplays with the revenue from other lines of business across the company and affiliates of the company (or a similar analysis for profits if profitability were used as an alternative metric). Assessing the relationship among different business lines within the company and affiliates would have been particularly challenging with a large, multi-layered organization.

Third, the Bureau has concluded, following consideration of the many comments from industry and SBA Advocacy, that the proposed revenue test would disadvantage monoline mortgage businesses, many of which are small entities, by effectively precluding them from paying profit-sharing bonuses and making contributions to non-qualified plans under any circumstances regardless of the particular aspects of their compensation programs. The Bureau believes that, as a general matter, steering incentives may be present to a greater degree with mortgage businesses that are small in size because the incentive of individual loan originators to upcharge likely increases as the total number of individual loan originators in an organization decreases.[128] The negative effect of the proposed rule, however, on monoline mortgage businesses would have been uniform; regardless of where

[128] *See* earlier discussion of ''free-riding'' behavior in the section-by-section analysis of § 1026.36(d)(1)(i); *see also* 77 FR 55272, 55296–97 (Sept 7. 2012). In the proposal, the Bureau also noted that for small depository institutions and credit unions (defined as those institutions with assets under $175 million), regulatory data from 2010 indicate that for small savings institutions whose primary business focus is on residential mortgages, 59 percent of these firms would be restricted from paying bonuses based on mortgage-related profits to their individual loan originators under the revenue test if set at 50 percent. The Bureau noted that it lacks comprehensive data on nonbank lenders and, in particular, does not have information regarding the precise range of business activities that such companies engage in, and as a result, it was unclear the extent to which such nonbank lenders will face restrictions on their compensation practices. 77 FR 55272, 55347 (Sept. 7, 2012). While the Bureau has received additional data regarding nonbank lenders from the NMLSR confirming the original data, information regarding the range of revenue sources is still incomplete.

the threshold would have been set, these businesses never would have been able to ''pass'' the revenue test. Thus, the revenue test would have been over-inclusive with respect to monoline mortgage businesses.

For these reasons, the Bureau does not believe that the revenue test (or a test that substitutes profitability for revenues) can be structured in a way that is sufficiently calibrated to prevent steering incentives. Thus, the Bureau is not adopting either type of test and, instead, as discussed below, is adopting a total compensation test consistent with an alternative on which the Bureau sought comment in the proposal.

36(d)(1)(iv)

As noted above, proposed § 1026.36(d)(1)(iii) would have permitted payment of compensation that is directly or indirectly based on the terms of transactions of multiple individual loan originators in limited circumstances. In this final rule, the provisions that would have been included in § 1026.36(d)(1)(iii) regarding the payment of compensation in the form of profit-sharing bonuses and contributions to non-qualified plans have been revised and redesignated as § 1026.36(d)(1)(iv), which addresses payments of compensation under ''non-deferred profits-based- compensation plans'' as defined in the rule. A non-deferred profits-based compensation plan is any arrangement for the payment of non-deferred compensation that is determined with reference to profits of the person from mortgage-related business. The commentary clarifying § 1026.36(d)(1)(iv), previously contained in proposed comment 36(d)(1)–2.iii.G, has also been reorganized and incorporated into comment 36(d)(1)–3.v in the final rule.

36(d)(1)(iv)(A)

Proposed § 1026.36(d)(1)(iii)(A) would have prohibited payment of compensation to an individual loan originator that directly or indirectly was based on the terms of that individual loan originator's transaction or transactions. The Bureau explained in the section-by-section analysis of the proposal that this language was intended to prevent a person from paying compensation to an individual loan originator based on the terms of that individual loan originator's transactions regardless of whether the compensation would otherwise be permitted in the limited circumstances under § 1026.36(d)(1)(iii)(B). Proposed comment 36(d)(1)–2.iii.F would have clarified the provision by giving an example and cross-referencing proposed comment 36(d)(1)–1 for further interpretation concerning whether compensation was ''based on'' transaction terms.

The Bureau did not receive comments specifically addressing this provision. The Bureau is finalizing this section and comment 36(d)(1)–2.iii.F as proposed, except that § 1026.36(d)(1)(iii)(A) has been redesignated as § 1026.36(d)(1)(iv)(A) and comment 36(d)(1)–2.iii.F has been redesignated as comment 36(d)(1)–3.iv for technical reasons.

36(d)(1)(iv)(B)

36(d)(1)(iv)(B)(1)

Although the Bureau is not adopting the revenue test, the Bureau still believes that the final rule should permit the payment of compensation under non-deferred profits-based compensation plans to individual loan originators under limited circumstances where the incentives for the individual loan originators to steer consumers to different loan terms are sufficiently attenuated. As noted earlier, the Bureau shares the concerns of consumer groups that setting a baseline rule too loosely would undermine the general prohibition of compensation based on transaction terms under TILA section 129B(c)(1) and § 1026.36(d)(1)(i), which could allow for a return of the types of lending practices that contributed to the recent mortgage-market crisis. However, as the Bureau stated above and in the proposal, compensation under non-deferred profits-based compensation plans does not always raise steering concerns, and this form of compensation, when appropriately structured, can provide inducements for individual loan originators to perform well and to become invested in the success of their organizations. The Bureau believes that allowing payment of compensation under non-deferred profits-based compensation plans under carefully circumscribed circumstances would appropriately balance these objectives. The Bureau also believes that implementing the TILA section 129B(c)(1) prohibition on compensation that varies based on loan terms to allow for these types of carefully circumscribed exceptions (with clarifying interpretation in the commentary) is consistent with the Bureau's interpretive authority under the Dodd-Frank Act and the Bureau's authority under section 105(a) of TILA to issue regulations to effectuate the purposes of TILA, prevent circumvention or evasion, or to facilitate compliance. Neither the TILA prohibition on compensation varying based on loan terms nor the existing regulatory prohibition on compensation based on transaction terms and conditions expressly addresses non-deferred profits-based compensation plans. Therefore, the clarity provided by § 1026.36(d)(1)(iv) and its commentary will help prevent circumvention or evasion of, and facilitate compliance with, TILA by clearly stating when these types of payments and contributions are permissible.

The Bureau, additionally, believes that a bright-line approach setting a numerical threshold above which compensation under a non-deferred profits-based compensation plan is prohibited is preferable to a principles-based approach, which was suggested by some commenters. Application of a principles-based approach would necessarily involve a substantial amount of subjectivity. Because the design and operation of these programs are varied and complex, the legality of many of them would likely be in doubt, creating uncertainty and challenges for industry compliance, agency supervision, and agency and private enforcement of the underlying regulation.[129]

Therefore, the Bureau is adopting, in § 1026.36(d)(1)(iv)(B)(*1*), a rule that permits an individual loan originator to receive, and a person to pay, compensation under a non-deferred profits-based compensation plan where the compensation is determined with reference to the profits of the person from mortgage-related business, provided that the compensation to the individual loan originator under non-deferred profits-based compensation plans does not, in the aggregate, exceed 10 percent of the individual loan originator's total compensation corresponding to the same time period. Section 1026.36(d)(1)(iv)(B)(*1*) permits this compensation even if it is directly or indirectly based on the terms of transactions of multiple individual loan originators, provided that, pursuant to § 1026.36(d)(1)(iv)(A), the compensation is not directly or indirectly based on the terms of the individual loan originator's transactions.[130]

[129] As noted earlier, one commenter urged the Bureau to look to the implementation of certain G–20 task force recommendations on incentive compensation practices (*i.e.*, the FSF Principles) as a model for a principles-based rather than a rules-based approach. However, the FSF Principles are primarily focused on compensation programs at significant financial institutions that incentivize imprudent risk-taking, which is not the subject of this rulemaking. FSF Principles at 1–2. Thus, the Bureau believes this suggested precedent for a qualitative, principles-based approach is inapposite.

[130] The provisions of § 1026.36(d)(1)(iv)(B)(*1*) are sometimes hereinafter referred to as the ''10-percent

Proposed comment 36(d)(1)–2.iii.A, which would have clarified the meaning of ''profit-sharing plan'' under proposed § 1026.36(d)(1)(iii), has been revised to clarify the meaning of ''non-deferred profits-based compensation plan'' under § 1026.36(d)(1)(iv) and is adopted as comment 36(d)(1)–3.ii. The Bureau is adopting in this final rule much of the language in the proposed comment, with a few exceptions (in addition to technical changes and reorganization). The comment clarifies that a non-deferred profits-based compensation plan is any compensation arrangement where an individual loan originator may be paid variable, additional compensation based in whole or in part on the profits of the mortgage-related business of the person paying the compensation. However, the comment now clarifies that a non-deferred profits-based compensation plan does not include a designated tax-advantaged plan (as defined in § 1026.36(d)(1)(iii)), or a deferred compensation plan that is not a designated plan as defined in the rule, including plans under Internal Revenue Code section 409A, 26 U.S.C. 409A.

The Bureau proposed to treat profits-based deferred compensation under non-qualified plans in the same manner as non-deferred profit-sharing payments (*e.g.,* bonuses). Although the proposal preamble discussion focused primarily on profit-sharing bonus programs, the reference to non-qualified plans also potentially could have included certain deferred-compensation plans (such as plans covered by Internal Revenue Code section 409A, 26 U.S.C. 409A) that do not receive the same tax-advantaged status as the plans covered by § 1026.36(d)(1)(iii) of the final rule. The Bureau also solicited comment on whether there are additional types of non-qualified plans that should be treated similar to qualified plans under the rule. The Bureau received only one response that specifically focused on this issue by urging that the Bureau not place restrictions on ''nonqualified retirement arrangements'' that restore benefits that are limited under designated tax-advantaged plans. The commenter asserted that companies use these agreements in an attempt to give favorable treatment to highly-compensated employees under their company retirement plans, but provided no data regarding how frequently they are used to compensate loan originators.

The Bureau has considered the comment but declines to either include such plans within the exception for non-deferred compensation plans or to provide a separate exception to § 1026.36(d)(1) for such deferred compensation plans at this time. Applying the 10 percent cap on compensation under non-deferred profits-based compensation plans to compensation under non-designated plans in general would be administratively complex given the variety of such plans and the consequent difficulty of constructing formulae for including them in the calculations of income required to apply the 10 percent cap. Nor is the Bureau prepared to create a separate rule for deferred compensation plans that are not designated plans. The Bureau understands that such plans are generally quite rare and has no detailed evidence as to the extent or nature of their use in compensating loan originators. The Bureau also notes that they are not generally subject to many of the same restrictions that apply to the designated tax-advantaged plans discussed in the section by section analysis of § 1026.36(d)(1)(iii). The Bureau also does not have enough information regarding the structure of non-designated plans to determine what measures would be appropriate or necessary to cabin any potential for them to create steering incentives. Accordingly, the Bureau does not believe that it would be appropriate to provide an exception for such plans at this time.

Comment 36(d)(1)–3.ii further clarifies that under a non-deferred profits-based compensation plan, the individual loan originator may, for example, be paid directly in cash, stock, or other non-deferred compensation, and the amount to be paid out under the non-deferred profits-based compensation plan and the distributions to the individual loan originators may be determined by a fixed formula or may be at the discretion of the person (*e.g.,* such person may elect not to make any payments under the non-deferred profits-based compensation plan in a given year), provided the compensation is not directly or indirectly based on the terms of the individual loan originator's transactions. The comment further elaborates that, as used in § 1026.36(d)(1)(iv) and its commentary, non-deferred profits-based compensation plans include, without limitation, bonus pools, profits pools, bonus plans, and profit-sharing plans established by the person, a business unit within the person's organizational structure, or any affiliate of the person or business unit within the affiliate's organizational structure. The comment also provides examples illustrating application of this interpretation to certain types of non-deferred profits-based compensation plans.

Comment 36(d)(1)–3.ii (proposed as comment 36(d)(1)–2.iii.A) has been revised in several additional respects. The comment now clarifies that compensation under a non-deferred profits-based compensation plan could include, without limitation, annual or periodic bonuses, or awards of merchandise, services, trips, or similar prizes or incentives where the bonuses, contributions, or awards are determined with reference to the profitability of the person, business unit, or affiliate, as applicable. Reference to ''any affiliate'' has been added to include compensation programs where compensation is paid through an affiliate of the person. Moreover, in the proposal, the term ''business unit'' was included in this comment without elaboration. The final comment clarifies that the term ''business unit'' as used in § 1026.36(d)(1)(iv) and its commentary means a division, department, or segment within the overall organizational structure of the person or affiliate, as applicable, that performs discrete business functions and that the person treats separately for accounting or other organizational purposes. The examples in the comment have been revised to reflect that a performance bonus paid out of a bonus pool set aside at the beginning of the company's annual accounting period as part of the company's operating budget does not violate the baseline prohibition on § 1026.36(d)(1)(i), meaning that the limitations of § 1026.36(d)(1)(iv) do not apply to such bonuses. Finally, several technical changes have been made to the comment.

Comment 36(d)(1)–3.v (which was proposed as comment 36(d)(1)–2.iii.G) contains six paragraphs and clarifies a number of aspects of the regulatory text in § 1026.36(d)(1)(iv)(B)(*1*). Comment 36(d)(1)–3.v.A clarifies that the individual loan originator's total compensation (*i.e.,* the denominator under the 10-percent total compensation test) consists of the sum total of: (1) all wages and tips reportable for Medicare tax purposes in box 5 on IRS form W–2 [131] (or, if the individual loan originator is an independent contractor, reportable

total compensation test'' or the ''10-percent total compensation limit''; and the restrictions on compensation contained within the rule are sometimes hereinafter referred to as the ''10-percent limit.'' Compensation paid under a non-deferred profits-based compensation plan is sometimes hereinafter referred to as ''non-deferred profits-based compensation.''

[131] See the IRS Instructions to Form W–2, *available at http://www.irs.gov/pub/irs-pdf/iw2w3.pdf.*

compensation on IRS form 1099–MISC[132]);[133] and (2) at the election of the person paying the compensation, all contributions by the creditor or loan originator organization to the individual loan originator's accounts in designated tax-advantaged plans that are defined contribution plans.

The Bureau believes that linking the definition of total compensation to the types of compensation required to be included on the IRS W–2 or 1099–MISC forms, as applicable, will make the calculation simpler for the 10-percent total compensation limit because loan originator organizations and creditors already must prepare W–2 and 1099–MISC forms for their employees and independent contractors, if any. Thus, creditors and loan originator organizations presumably already have systems in place to track and aggregate the types and amounts of individual loan originator compensation that are required to be reported on the IRS forms. Moreover, as explained in comment 36(d)(1)–3.v, a creditor or loan originator organization is not required to factor into the calculation of total compensation any contribution to a designated defined contribution plan other than amounts reported on the W–2 or 1099–MISC forms. In addition, the Bureau believes this approach will yield a more precise ratio of compensation paid under non-deferred profits-based compensation plans determined with reference to mortgage-related profits to total compensation than a definition that selectively includes or excludes certain types of compensation, and this more accurate result will more closely align with the incentives of loan originators.

Comment 36(d)(1)–3.v.B clarifies the requirement under § 1026.36(d)(1)(iv)(B)(*1*) that compensation paid to the individual loan originator that is determined with reference to the profits of the person from mortgage-related business is subject to the 10-percent total compensation limit (*i.e.,* the ''numerator'' of the 10-percent total compensation limit). The comment clarifies that ''profits of the person'' include, as applicable depending on where the non-deferred profits-based compensation plan is set, profits of the person, the business unit to which the individual loan originators are assigned for accounting or other organizational purposes, or an affiliate of the person. The comment notes that profits from mortgage-related business are any profits of the person or the business unit to which the individual loan originators are assigned for accounting or other organizational purposes that are determined with reference to revenue generated from transactions subject to § 1026.36(d), and that pursuant to § 1026.36(b) and comment 36(b)–1, § 1026.36(d) applies to closed-end consumer credit transactions secured by dwellings.

The comment further notes this revenue would include, without limitation, and as applicable based on the nature of the business of the person, business unit, or affiliate origination fees and interest associated with dwelling-secured transactions for which individual loan originators working for the person were loan originators, income from servicing of such transactions, and proceeds of secondary market sales of such transactions. The non-exhaustive list of mortgage-related business revenue provided in the comment largely parallels the definition of ''mortgage-related revenue'' that the Bureau had proposed in § 1026.36(d)(1)(iii)(B)(*1*) as part of the revenue test approach. The comment also clarifies that, if the amount of the individual loan originator's compensation under non-deferred profits-based compensation plans for a time period does not, in the aggregate, exceed 10 percent of the individual loan originator's total compensation corresponding to the same time period, compensation under non-deferred profits-based compensation plans may be paid under § 1026.36(d)(1)(iv)(B)(*1*) regardless of whether or not it was determined with reference to the profits of the person from mortgage-related business.

Comment 36(d)(1)–3.v.C discusses how to determine the applicable time period under § 1026.36(d)(1)(iv)(B)(*1*). The comment also clarifies that a company may pay compensation subject to the 10-percent limit during different time periods falling within the company's annual accounting period for keeping records and reporting income and expenses, which may be a calendar year or a fiscal year depending on the person's annual accounting period, but in such instance, the 10-percent limit applies both as to each time period and cumulatively as to the annual accounting period. Comment 36(d)(1)–3.v.C also illustrates the clarification in the comment through two examples.

The Bureau believes that the time period for which the individual loan originator's performance, loan volume, or other factors was evaluated for purposes of determining the bonus that the individual loan originator is to receive is the most appropriate and practicable measuring period for the 10-percent total compensation limit. For example, the Bureau considered using as the measuring period for applying the 10-percent total compensation limit the time period during which the compensation subject to the 10-percent limit is actually paid. This measuring period would track when the bonuses are reportable as Federal income by the individual loan originators. However, if this measuring period were used, a year-end bonus determined with respect to one year and paid during January of the following year would result in the company having to project the total compensation for the entire year in which the bonus was paid to assess whether the bonus determined with reference to the previous year met the 10-percent limit.[134] This would make compliance difficult, if not impossible, and also lead to imprecision between the numerator (which is an actual amount) and the denominator (which is an estimated amount). Designating the measuring period as an annual period (whether a calendar or fiscal year) in all circumstances, for example, would raise similar issues about the need to project total compensation over a future period to determine whether a periodic bonus (such as a quarterly bonus) is in compliance with the 10-percent total compensation limit.

The Bureau acknowledges that the approach reflected in this final rule may require some adjustments to creditors' and loan originator organizations' systems of accounting and payment of bonuses if they do not pay compensation under a non-deferred profits-based compensation plan until after a quarter, calendar year, or other benchmark measuring period for which the compensation is calculated (namely, to ensure that total compensation in a given time period is net of any compensation under a non-deferred profits-based compensation plan paid

[132] See the IRS Instructions to Form 1099–MISC, *available at http://www.irs.gov/pub/irs-pdf/i1099msc.pdf.*

[133] Total compensation of individual loan originators employed by the creditor or loan originator organization would be reflected on a W–2, whereas total compensation of an individual loan originator working for a creditor or loan originator organization as an independent contractor would be reflected on a 1099–MISC form. If an individual loan originator has some compensation that is reportable on the W–2 and some that is reportable on the 1099–MISC, the total compensation is the sum total of what is reportable on each of the two forms.

[134] Paying a year-end bonus after the end of the calendar year does not render the bonus a form of deferred compensation since the bonus, once paid, is immediately taxable to the recipient.

[134] Paying a year-end bonus after the end of the calendar year does not render the bonus a form of deferred compensation since the bonus, once paid, is immediately taxable to the recipient.

during that given time period but attributable to a previous time period). The Bureau believes that no other approach would align entirely with current industry practice, however.[135]

Comment 36(d)(1)–3.v.D discusses how profits-based awards of merchandise, services, trips, or similar prizes or incentives are treated for purposes of the 10-percent total compensation test. This comment clarifies that, if any compensation paid to an individual loan originator under § 1026.36(d)(1)(iv) pursuant to a non-deferred profits-based compensation plan consists of an award of merchandise, services, trips, or similar prizes or incentives, the cash value of the award is factored into the calculations of the compensation subject to the 10-percent limit and the total compensation under § 1026.36(d)(1)(iv)(B)(*1*). This comment also gives an example illustrating how the award of a trip to an individual loan originator would be treated under the rule in contrast to a cash bonus. The Bureau believes that this comment will ensure that non-cash bonus awards made with reference to mortgage-related business profits will be included and appropriately valued for purposes of calculating the 10-percent compensation and the total compensation under § 1026.36(d)(1)(iv)(B)(*1*).

Comment 36(d)(1)–3.v.E clarifies that the 10-percent total compensation limit under § 1026.36(d)(1)(iv) does not apply if the compensation under a non-deferred profits-based compensation plan is determined solely with reference to profits from non-mortgage-related business as determined in accordance with reasonable accounting principles. The comment further notes that reasonable accounting principles: (1) Reflect an accurate allocation of revenues, expenses, profits, and losses among the person, any affiliate of the person, and any business units within the person or affiliates; and (2) are consistent with the accounting principles utilized by the person or the affiliate with respect to, as applicable, its internal budgeting and auditing functions and external reporting requirements. The comment also notes examples of external reporting and filing requirements that may be applicable to creditors and loan originator organizations are Federal income tax filings, Federal securities law filings, or quarterly reporting of income, expenses, loan origination activity, and other information required by GSEs.

To the extent a company engages in both mortgage-related and non-mortgage-related business, the potential exists for commingling of mortgage- and non-mortgage-related business profits. In this instance, the Bureau believes that non-deferred profits-based compensation for individual loan originators is to be exempt from the general rule under § 1026.36(d)(1), the determination of the amount of the non-mortgage-related business profits must be made in accordance with reasonable accounting principles. The Bureau does not believe this requirement will be burdensome because if a creditor or loan originator organization chooses to separately calculate profits from mortgage and non-mortgage related businesses either for internal accounting purposes, public reporting, or simply for the purposes of paying compensation under a non-deferred profits-based compensation plan pursuant to this regulation, the firm will do so in accordance with reasonable accounting principles. Where the firm does not segregate its profits in this way for Regulation Z purposes, all profits will be regarded as being from mortgage-related business.

Comment 36(d)(1)–3.v.F.*1* provides an additional example of the application of 1026.36(d)(1)(iv)(B)(*1*). The comment assumes that, in a given calendar year, a loan originator organization pays an individual loan originator employee $40,000 in salary and $125,000 in commissions, and makes a contribution of $15,000 to the individual loan originator's 401(k) plan (for a total of $180,000). At the end of the year, the loan originator organization pays the individual loan originator a bonus based on a formula involving a number of performance metrics, to be paid out of a profit pool established at the level of the company but that is derived in part through the company's mortgage originations. The loan originator organization derives revenues from sources other than transactions covered by § 1026.36(d). The comment notes that, in this example, the performance bonus would be directly or indirectly based on the terms of multiple individual loan originators' transactions pursuant to § 1026.36(d)(1)(i), as clarified by comment 36(d)(1)–1.ii, because it is being funded out of a profit pool derived in part from mortgage originations. Thus, the comment notes that the bonus is permissible under § 1026.36(d)(1)(iv)(B)(*1*) only if it does not exceed 10 percent of the loan originator's total compensation, which, in this example, consists of the individual loan originator's salary, commissions, and may include the performance bonus. The comment concludes that the loan originator organization may pay the individual loan originator a performance bonus of up to $20,000 (*i.e.,* 10 percent of $200,000 in total compensation).

Comment 36(d)(1)–3.v.F also gives an example of the different treatment under § 1026.36(d)(1)(iv)(B)(*1*) of two different profits-based bonuses for an individual loan originator working for a creditor: a ''performance'' bonus based on the individual loan originator's aggregate loan volume for a calendar year that is paid out of a bonus pool determined with reference to the profitability of the mortgage origination business unit, and a year-end ''holiday'' bonus in the same amount to all company employees that is paid out of a company-wide bonus pool. As explained in the comment, because the performance bonus is paid out of a bonus pool that is determined with reference to the profitability of the mortgage origination business unit, it is compensation that is determined with reference to mortgage-related business profits, and the bonus is therefore subject to the 10-percent total compensation limit. The comment notes that the ''holiday'' bonus is also subject to the 10-percent total compensation limit if the company-wide bonus pool is determined, in part, with reference to the profits of the creditor's mortgage origination business unit. The comment further clarifies that the ''holiday'' bonus is not subject to the 10-percent total compensation limit if the bonus pool was not determined with reference to the profits of the mortgage origination business unit as determined in accordance with reasonable accounting principles. The comment also clarifies that, if the ''performance'' bonus and the ''holiday'' bonus in the aggregate do not exceed 10 percent of the individual loan originator's total compensation, such bonuses may be paid under § 1026.36(d)(1)(iv)(B)(*1*) without the necessity of determining from which bonus pool they were paid or whether they were determined with reference to the profits of the creditor's mortgage origination business unit.

Comment 36(d)(1)–3.v.G clarifies that an individual loan originator is deemed to comply with its obligations regarding receipt of compensation under § 1026.36(d)(1)(iv)(B)(*1*) if the individual loan originator relies in good faith on an accounting or a statement provided by the person who determined the individual loan originator's compensation under a non-deferred

[135] The Bureau understands there is variation in the market about whether creditors and loan originator organizations typically pay non-deferred profits-based compensation near the end of, but within, the time period evaluated for purposes of paying the non-deferred profits-based compensation or during a subsequent time period.

profits-based compensation plan under § 1026.36(d)(1)(iv)(B)(*1*) and where the statement or accounting is provided within a reasonable time period following the person's determination. This comment is intended to reduce the compliance burdens on individual loan originators by providing a safe harbor for complying with the restrictions on receiving compensation under a non-deferred profits-based compensation plan under § 1026.36(d)(1)(iv)(B)(*1*).[136] The safe harbor will be available to any individual loan originator receiving compensation that is subject to the 10-percent limit where the person paying the compensation subject to the 10-percent limit elects to provide the individual loan originator with an accounting or statement in accordance with the specifications in the safe harbor and the individual relies in good faith on the accounting or statement.

In the proposal, the Bureau indicated that it crafted the proposal so as to implement the Dodd-Frank Act provisions on loan originator compensation in a way that would reduce the compliance burdens on covered persons. Furthermore, the Bureau sought comment on the potential impact on all types of loan originators of the proposed restrictions on the methods by which a loan originator is remunerated in a transaction. As noted above, a trade association that represents loan originators (both organizations and individuals) expressed concern that the compensation restrictions in the revenue test would lead to ''unacceptable litigation'' for individual loan originators (in addition to creditors and loan originator organizations).

In developing the final rule, the Bureau has paid particular attention to the compliance burdens on individual loan originators with respect to complying with the restrictions on receiving compensation subject to the 10-percent total compensation limit under § 1026.36(d)(1)(iv). The Bureau has crafted the final rule to facilitate the compliance of individual loan originators without undue burden or cost. The Bureau believes that in most cases, individual loan originators would not have the knowledge of or control over the information that would enable them to determine their compliance, and the Bureau does not believe it would be reasonable to expect them to do so. The Bureau has also crafted the final rule to avoid subjecting these individuals to unnecessary litigation and agency enforcement actions.[137]

The Bureau does not believe a similar safe harbor is warranted for creditors and loan originator organizations that elect to pay compensation under § 1026.36(d)(1)(iv). Creditors and loan originator organizations can choose whether or not to pay this type of compensation, and if they do they should be expected to comply with the provisions. Moreover, in contrast to a recipient of compensation, a payer of compensation has full knowledge and control over the numerical and other information used to determine the compensation. The Bureau acknowledges that in response to the proposed revenue test, several industry commenters as well as SBA Advocacy (on behalf of participants at its roundtable) expressed concern about potential TILA liability or repurchase risk where an error is made under the revenue test calculation. Under the revenue test, an error in determining the amount of total revenues or mortgage-related revenues could have potentially impacted all awards of compensation under a non-deferred profits-based compensation plan to individual loan originators for a particular time period. Because the 10-percent total compensation test focuses on compensation at the individual loan originator level, however, the potential liability implications of a calculation error largely would be limited to the effect of that error alone. In other words, in contrast to the revenue test, an error under the 10-percent total compensation test would not likely have downstream liability implications as to other compensation payments across the company or business unit. The Bureau also believes that creditors and loan originator organizations will develop policies and procedures to minimize the possibility of such errors.

The Bureau is adopting the 10-percent total compensation test because the Bureau believes it will more effectively restrict the compensation programs that actually incentivize steering behavior on the part of individual loan originators than the proposed revenue test. Like the proposed revenue test, the 10-percent total compensation test clarifies the treatment of profits-based bonuses and aims to limit their payment to circumstances where incentives to individual loan originators to steer consumers to different loan terms are small. However, the Bureau believes that the 10 percent compensation test will be more effective at accomplishing that goal because it calibrates the restriction not based on a general measurement of the company's profits or revenues, but rather on the amount of money paid to the individual loan originator, which provides the most concrete form of incentive. Moreover, the Bureau believes that the 10-percent total compensation test will avoid the revenue test's disparate impact on certain segments of the industry, will be less complex, and will be less prone to circumvention and manipulation.

Furthermore, the constitution of the individual loan originator's compensation package, including the presence and relative distribution of compensation under non-deferred profits-based compensation plans compared to other components of the total compensation, is a more direct and accurate indicator than company revenues or profitability of an individual loan originator's incentive to steer consumers to different loan terms. In contrast, a revenue or profitability test would completely bar all individual loan originators working for creditors or loan originator organizations that are above the relevant thresholds from certain compensation irrespective of the differential effects particular compensation arrangements would have on each individual's loan originator's incentives. Conversely, a revenue or profitability test would allow unchecked bonus and other compensation under a non-deferred profits-based compensation plan for individual loan originators working for a creditor or loan originator organization that falls below the relevant threshold. By their nature, these types of tests would create substantial problems of under- and over-inclusiveness.

The 10-percent total compensation test, unlike the revenue test, will not disadvantage creditors and loan originator organizations that are monoline mortgage businesses. The Bureau also believes that it will have less burdensome impact on small entities than the revenue test. As discussed above, the revenue test would have effectively precluded monoline mortgage businesses from paying profit-sharing bonuses to their individual loan originators or making contributions to those individuals' non-qualified plans because these institutions' mortgage-related revenues as a percentage of total revenues would always exceed 50 percent. A test focused on compensation at the individual loan originator level, rather than revenues at the level of the company or the division within the company at which the compensation

[136] The restrictions on non-deferred profits-based compensation under § 1026.36(d)(1)(iv)(B)(*1*) impose obligations on both the person paying the compensation and on the individual loan originator receiving the compensation.

[137] As noted earlier, the Dodd-Frank Act extended the limitations period for civil liability under TILA section 130 from one year to three years and also made mortgage originators civilly liable for violations of TILA.

program is set up, would be available to all companies regardless of the diversity of their business lines. Moreover, as the Bureau noted in the proposal, creditors and loan originator organizations that are monoline mortgage businesses disproportionately consist of small entities.[138] Unlike the revenue test, the 10-percent total compensation test will place restrictions on compensation under a non-deferred profits-based compensation plan (such as bonuses) that are neutral across entity size. The Bureau also believes that the relative simplicity of the 10-percent total compensation test in comparison to the revenue test or a principles-based approach suggested by some commenters will also benefit small entities.[139]

Moreover, the 10-percent total compensation test establishes a bright line rule that is less complex than the revenue test. The 10-percent total compensation test does not require the Bureau to establish, and industry to comply with, a definition of total revenues or assess how the revenues of affiliates would be treated for purposes of the test. If a mortgage business wishes to provide compensation to its loan originators up to the 10-percent limit, it need only determine the amount of compensation under a non-deferred profits-based compensation plan and the amount of total compensation. As described above, the denominator of the test, total compensation, consists of the sum total of compensation that is reportable on box 5 of the IRS W–2 (or, as applicable, the 1099–MISC form) filed with respect to the individual loan originator plus any contributions to the individual loan originator's account under designated tax-advantaged defined contribution plans where the contributions are made by the person sponsoring the plan. Creditors and loan originator organizations presumably already have systems in place to track and aggregate this information. Creditors and loan originator organizations would need to calculate non-mortgage-related business profits only if they are paying compensation under a non-deferred profits-based compensation plan outside of the 10-percent limit. The Bureau expects that this will be largely unnecessary because of the ample other methods to compensate individual loan originators and the principle that most creditors and loan originator organizations will wish to compensate their individual loan originators from a non-deferred profits-based compensation plan that is established with reference to mortgage-related business profits (*i.e.,* to align the individual loan originators' incentives properly).[140]

The Bureau acknowledges that the 10-percent total compensation test is not completely without complexity and that some institutions may have more difficulty than others determining which bonuses are subject to the regulation. For example, as noted above, the 10-percent total compensation test requires creditors or loan originator organizations that wish to pay compensation under a non-deferred profits-based compensation plan to their individual loan originators in excess of the 10-percent limit to determine whether the non-deferred profits-based compensation is determined with reference to non-mortgage-related business profits, in accordance with reasonable accounting principles. Comment 36(d)(1)–3.v.E provides clarifications as to these requirements, as described above. As noted above, however, the Bureau believes that creditors and loan originator organizations that are subject to this final rule and that choose to pay non-deferred profits-based compensation determined with reference to non-mortgage-related business profits already use, or would in the normal course use, reasonable accounting principles to make these calculations. Firms also could simply account for profits on a company-wide basis for purposes of meeting the 10-percent total compensation limit, which would negate the need for specifically calculating mortgage-related profits.

The Bureau believes that the 10-percent total compensation test also presents less complexity than the alternative principles-based standards suggested by some commenters. As discussed in the section-by-section analysis of § 1026.36(d)(1)(i), application of a principles-based standard as a general matter would necessarily involve a substantial amount of subjectivity and present challenges for industry compliance, agency supervision, and agency and private enforcement of the underlying regulation. Moreover, the disparate standards suggested by industry commenters reveal the inherent difficulty of crafting a workable principles-based approach. These standards would need to be defined by the Bureau to be applied consistently across creditors and loan originator organizations. The complexity involved in crafting such principles would make it difficult to calibrate properly the countervailing interests for industry compliance, agency supervision and enforcement, and private enforcement.

Some commenters supported the principles behind a test involving limits on individual loan originator's non-deferred profits-based compensation based on the Bureau's solicitation of comment on such an approach as an alternative to the revenue test. As noted above, a national trade association of community banks and depositories supported limiting compensation from a non-qualified bonus plan to no more than 25-percent of an individual loan originator's total compensation. As discussed above, a mortgage company commented that limiting compensation that is indirectly based on terms would cover almost any form of compensation determined with reference to lender profitability and urged that, instead, the rulemaking focus on compensation specific to the loan originator and the transaction.[141] As with any line-drawing exercise, there is no universally acceptable place to draw the line that definitively separates payments that have a low likelihood of causing steering behavior from those that create an unacceptably high likelihood. This Bureau believes, however, that the steering incentives would be too high were loan originators permitted to receive up to 25 percent of their compensation from mortgage-related profits, especially given the availability of compensation from mortgage-related profits through contributions to a designated tax-advantaged plan. Instead, a bonus of up to 10 percent of the individual loan originator's compensation will achieve the positive effects thought to be associated with non-deferred profits-based compensation plans.

The Bureau acknowledges that the 10-percent total compensation test does not

[138] See earlier discussion of the regulatory data on small savings institutions whose primary business focus is on residential mortgages that was cited in the proposal.

[139] The impacts on small entities are described in more detail in the Final Regulatory Flexibility Analysis (FRFA) contained in part VII below.

[140] Furthermore, many individual loan originators who originate loans infrequently and not typically as part of their job will be otherwise exempt pursuant to the de minimis test.

[141] As noted above, this commenter recommended an alternative disclosure approach to make the consumer aware that the loan originator's compensation may increase or decrease based on the profitability of the creditor and urging the consumer to shop for credit to ensure that he or she has obtained the most favorable loan terms. The Bureau believes that this suggestion, while creative, would not have been feasible because there would have been no time to engage in consumer testing prior to the statutory deadline for issuing a final rule. Moreover, the Bureau does not believe a disclosure-only approach would implement the statute as faithfully, which as a substantive matter prohibits loan originator compensation that varies based on loan terms.

fully reflect that different types of non-deferred profits-based compensation plans in particular market settings might be shown to create substantially fewer steering incentives. As noted above, this final rule is not without complexity, particularly regarding the definition of the numerator of the 10-percent total compensation test. On balance, however, the Bureau believes this approach is less complex than the revenue test, and the burdens for both compliance and supervision will be reduced in comparison to the revenue test.

Finally, the Bureau believes that the potential for circumvention and manipulation are less pronounced than under the revenue test. The revenue test would have required all regulated persons to calculate mortgage-related revenues and non-mortgage-related revenues separately to determine the relative contribution of the two to the firm's total revenues. Here, however, the Bureau believes that most creditors and loan originator organizations will not choose to account for their profits across business lines and instead will choose to limit the payment of non-deferred profits-based compensation to 10 percent of total compensation. For the firms that choose to do such disaggregated accounting, comment 36(d)(1)–3.v.E clarifies that they are to use reasonable accounting principles. If, notwithstanding the commentary, firms were to attempt to use unreasonable accounting principles or manipulate corporate structures to circumvent the rule, the Bureau will consider appropriate action.

In this final rule, the Bureau has made other changes to the commentary to § 1026.36(d)(1) that reflect substantive or technical changes from language that was in the proposal. The Bureau has made several technical changes to comment 36(d)(1)–1.ii. For example, where applicable, reference to ''transaction terms'' in this comment (and others) has been replaced with ''a term of a transaction,'' consistent with the substitution of this term throughout § 1026.36(d)(1) and its commentary.

In addition to being redesignated as comment 36(d)(1)–3, proposed comment 36(d)(1)–2.iii has been revised in several respects from the proposal. Reference to § 1026.36(d)(1)(iv) has been added to the commentary to § 1026.36(d), where applicable, to track the distinctions between designated plan provisions in § 1026.36(d)(1)(iii) and non-deferred profits-based compensation plans in § 1026.36(d)(1)(iv). Moreover, language has been added clarifying that subject to certain restrictions, § 1026.36(d)(1)(iii) and (iv) permits the payment of certain compensation that otherwise would be prohibited by § 1026.36(d)(1)(i), because it is directly or indirectly based on the terms of multiple transactions of multiple individual loan originators. The cross-references to other sections and commentary clarifying the scope of § 1026.36(d) have been excluded from the comment, because this clarification of the scope of § 1026.36(d) is not necessary in light of other changes to the regulatory text of § 1026.36(d) in this final rule. Several technical changes were made as well.

In this final rule, proposed comment 36(d)(1)–2.iii.B has been adopted as comment 36(d)(1)–3.i. This comment clarifies the meaning of defined benefit and defined contribution plans as such terms are used in § 1026.36(d)(1)(iii).

The Bureau has not finalized the portion of proposed comment 36(d)(1)–2.iii.C that would have clarified that if a creditor did not permit its individual loan originator employees to deviate from the creditor's pre-established loan terms, such as the interest rate offered, then the creditor's payment of a bonus at the end of a calendar year to an individual loan originator under a profit-sharing plan would not be related to the transaction terms of multiple individual loan originators, and thus would be outside the scope of the prohibition on compensation based on terms under § 1026.36(d)(1)(i). Upon further consideration of the issues addressed in this proposed comment, the Bureau believes that inclusion of the comment does not appropriately clarify the restrictions under § 1026.36(d)(1)(i) as clarified by comment 36(d)(1)–1.ii. The existence of a potential steering risk where loan originator compensation is based on the terms of multiple transactions of multiple individual loan originators is not predicated exclusively on whether an individual loan originator has the ability to deviate from pre-established loan terms. This is because the individual loan originator may have the ability to steer consumers to different loan terms at the pre-application stage, when the presence or absence of a loan originator's ability to deviate from pre-established loan terms would not yet be relevant during these interactions. For example, a consumer might contact the individual loan originator for a preliminary price quote or, if the process is further along, the consumer and individual loan originator might meet so that the individual loan originator can begin gathering the items necessary to constitute a loan application under RESPA (which triggers the RESPA good faith estimate and TILA early disclosure requirements). All of these interactions would take place prior to the application and underwriting. Yet, steering potential would exist to the extent the individual loan originator might have the ability, for example, to suggest the consumer consider different loan products based on the individual loan originator's knowledge and experience of the market or his or her anticipation of the underwriting decision based on the information delivered by the consumer. The Bureau recognizes that certain industry commenters supported the proposed comment. However, the Bureau believes that the comment could potentially lead to confusion and misinterpretation about the applicability of the underlying prohibition on compensation based on transaction terms.

The last sentence of proposed comment 36(d)(1)–2.iii.C (adopted as comment 36(d)(1)–3.iii in the final rule) also has been revised from the proposal. The proposed comment would have permitted a loan originator organization to pay a bonus to or contribute to a non-qualified profit-sharing plan of its loan originator employees from all its revenues provided those revenues were derived exclusively from fees paid by a creditor to the loan origination organization for originating loans funded by the creditor. The comment explains that a bonus or contribution in these circumstances would not be directly or indirectly based on multiple individual loan originators' transaction terms because § 1026.36(d)(1)(i) precludes the creditor from paying a loan originator organization compensation based on the terms of the loans it is purchasing. The Bureau is finalizing this portion of the comment as proposed, with three substantive changes. First, the comment now clarifies that loan originator organizations covered by the comment are those whose revenues are ''from transactions subject to § 1026.36(d),'' to emphasize that the revenues at issue are those determined with reference to transactions covered by this final rule. Second, the comment clarifies that such revenues must be ''exclusively derived from transactions covered by § 1026.36(d)'' not that such revenues must be ''derived exclusively from fees paid by creditors that fund its originations.'' This change reflects that the compensation referenced in the comment may not necessarily be called a fee and may come from creditors or consumers or both. Third, the Bureau has added some additional language to the portion of the comment clarifying that if a loan originator organization's revenues from transactions subject to

§ 1026.36(d) are exclusively derived from transactions subject to § 1026.36(d) (whether paid by creditors, consumers, or both), and that loan originator organization pays its individual loan originators a bonus under a non-deferred profits-based compensation plan, the bonus is not considered to be directly or indirectly based on the terms of multiple transactions of multiple individual loan originators. The Bureau also has made a few additional technical changes to the comment; no substantive change is intended.

This final rule does not include proposed comment 36(d)(1)–2.iii.D, which clarified that under § 1026.36(d)(1)(iii), the time period for which the compensation is paid is the time period for which the individual loan originator's performance was evaluated for purposes of the compensation determination (*e.g.,* calendar year, quarter, month), whether or not the compensation is actually paid during or after the time period. This comment clarified the measuring period for total revenues and mortgage-related revenue under the revenue test. Because the revenue test is not being finalized, this comment is not applicable. The commentary under § 1026.36(d)(1) reflects a re-designation of comment subsection references as a consequence of this proposed comment not being included in this final rule (*e.g.,* proposed comment 36(d)(1)–2.iii.E has been redesignated as comment 36(d)(1)–3.iv).

The final rule has made only a few technical changes to proposed comment 36(d)(1)–2.iii.F, which has been adopted as comment 36(d)(1)–3.iv in the final rule. The many revisions to proposed comment 36(d)(1)–2.iii.G (adopted as comment 36(d)(1)–3.v) are discussed earlier in this section-by-section analysis.

36(d)(1)(iv)(B)(2)

Proposed § 1026.36(d)(1)(iii)(B)(*2*) would have permitted a person to pay, and an individual loan originator to receive, compensation in the form of a bonus or other payment under a profit-sharing plan sponsored by the person or a contribution to a non-qualified plan if the individual is a loan originator (as defined in proposed § 1026.36(a)(1)(i)) for five or fewer transactions subject to § 1026.36(d) during the 12-month period preceding the compensation decision. This compensation would have been permitted even when the payment or contribution relates directly or indirectly to the terms of the transactions subject to § 1026.36(d) of multiple individual loan originators. Proposed § 1026.36(d)(1)(iii)(B)(*2*) is sometimes hereinafter referred to as the ''de minimis origination exception.''

The Bureau stated in the proposal that the intent of proposed § 1026.36(d)(1)(iii)(B)(*2*) would have been to exempt individual loan originators who engage in a de minimis number of transactions subject to § 1026.36(d) from the restrictions on payment of bonuses and making of contributions to non-qualified plans. An individual loan originator who is a loan originator for five or fewer transactions, the Bureau stated in the proposal, is not truly active as a loan originator and, thus, is insufficiently incentivized to steer consumers to different loan terms.

The de minimis origination exception was intended to cover, in particular, branch or unit managers at creditors or loan originator organizations who act as loan originators on an occasional, one-off basis to, for example, cover for individual loan originators who are out sick, on vacation, or need assistance resolving issues on loan applications. Existing comment 36(a)–4 clarifies that the term ''loan originator'' as used in § 1026.36 does not include managers, administrative staff, and similar individuals who are employed by a creditor or loan originator but do not arrange, negotiate, or otherwise obtain an extension of credit for a consumer, or whose compensation is not based on whether any particular loan is originated. In the proposal, the Bureau proposed to clarify in comment 36(a)–4 that a ''producing manager'' who also arranges, negotiates, or otherwise obtains an extension of consumer credit for another person is a loan originator and that a producing manager's compensation thus is subject to the restrictions of § 1026.36. The proposed regulatory text and commentary to § 1026.36(d)(1)(iii)(B)(*2*) did not distinguish among managers and individual loan originators who act as originators for five or fewer transactions in a given 12-month period, however.

The Bureau solicited comment on the number of individual loan originators who will be affected by the exception and whether, in light of such number, the de minimis test is necessary. The Bureau also solicited comment on the appropriate number of originations that should constitute the de minimis standard, over what time period the transactions should be measured, and whether this standard should be intertwined with the potential 10-percent total compensation test on which the Bureau is soliciting comment, discussed in the section-by-section analysis of proposed § 1026.36(d)(1)(iii)(B)(*1*). The Bureau, finally, solicited comment on whether the 12-month period used to measure whether the individual loan originator has a de minimis number of transactions should end on the date on which the compensation is paid, rather than the date on which the compensation decision is made.

Proposed comment 36(d)(1)–2.iii.H also would have provided an example of the de minimis origination exception as applied to a loan originator organization employing six individual loan originators. Proposed comment 36(d)(1)–2.iii.I.1 and –2.iii.I.2 would have illustrated the effect of proposed § 1026.36(d)(1)(iii)(A) and (B) on a company that has mortgage and credit card businesses and harmonizes through examples the concepts discussed in other proposed comments to § 1026.36(d)(1)(iii).

Consumer groups generally opposed permitting creditors and loan originator organizations to pay profit-sharing bonuses and make contributions to non-qualified plans where the individual loan originator is the loan originator for a de minimis number of transactions. A coalition of consumer groups asserted—consistent with their comments to the qualified plan and revenue test aspects of the proposal—that there should be no exceptions to the underlying prohibition on compensation based on transaction terms other than for volume of mortgages originated. These groups expressed concern that the proposal would allow an individual loan originator to be compensated based on the terms of its transactions so long as the individual loan originator is the originator for five or fewer transactions.[142]

Industry commenters generally either did not object to the proposed de minimis origination exception or expressly supported the exception if the threshold were set at a number greater than five. A national trade association representing the banking industry supported establishing a de minimis origination exception but asked that the threshold be increased to 15. The association reasoned that a threshold of five would not have been high enough to capture managers in community banks and smaller mortgage companies across jurisdictions who step in to act as loan originators on an ad hoc basis to assist individual loan originators under

[142] As discussed below, proposed § 1026.36(d)(1)(iii)(A) prohibits an individual loan originator from being compensated based directly or indirectly on the terms of the individual loan originator's transactions, and this prohibition applies to individual loan originators who otherwise would fall under the de minimis origination exception in proposed § 1026.36(d)(1)(iii)(B)(*2*).

their employ. In most instances, the association stated, these so called ''non-producing managers'' would not receive transaction-specific compensation, yet under the proposal their participation in a few transactions would have potentially disqualified them from incentive compensation programs in which other managers could participate. The association stated that should the Bureau deem 15 as too high of a threshold, it could adopt 15 as the threshold applicable to managers and administrative staff only. A bank and a credit union commenter urged the Bureau to increase the threshold to 25 for similar reasons (*i.e.,* to allow managers who occasionally originate loans more flexibility to participate in bonus programs).

A few industry commenters criticized the de minimis origination exception. One national trade association stated that the exception would be of only limited use and benefit, *e.g.,* for branch managers who assist with originations in very rare circumstances. A trade association representing community mortgage lenders commented that the de minimis exception, in conjunction with the revenue test, would have disparate impacts on small mortgage lenders that do not have alternate revenue sources. A compensation consulting firm stated that, similar to its comment on the revenue test, any bright line threshold will result in inequitable treatment.[143]

As discussed previously with respect to comments received on the revenue test, an organization writing on behalf of State bank supervisors stated that the Bureau's proposed regulatory changes regarding profit-sharing bonuses and contributions to non-qualified plans were largely appropriate, but the organization noted that enforcing standards based on thresholds for origination can be problematic because the number of transactions originated may have differing degrees of significance in different scenarios. The organization specifically noted the de minimis origination exception as an example of a potentially problematic threshold. The organization encouraged the Bureau either to justify the threshold levels through study or adopt a more flexible approach that can be tailored to various situations appropriately.

The Bureau is finalizing § 1026.36(d)(1)(iii)(B)(*2*) as proposed with four changes. First, the Bureau has redesignated proposed § 1026.36(d)(1)(iii)(B)(*2*) as § 1026.36(d)(1)(iv)(B)(*2*) in the final rule. This change was made to distinguish the regulatory text addressing non-deferred profits-based compensation plans from the regulatory text addressing designated plans.

Second, § 1026.36(d)(1)(iv)(B)(*2*) now reads ''a'' loan originator rather than ''the'' loan originator, as proposed. This change was made to emphasize that a transaction may have more than one loan originator under the definition of loan originator in § 1026.36(a)(1)(i).

Third, § 1026.36(d)(1)(iii)(B)(*2*) clarifies that the ''transactions'' subject to the minimis threshold are those transactions that are consummated. Where the term is used in § 1026.36 and associated commentary, ''transaction'' is deemed to be a consummated transaction; this clarification merely makes the point expressly clear for purposes of the de minimis origination exception, where the counting of transactions is critical toward establishing the application of the exception to a particular individual loan originator.

Fourth, the Bureau has increased the de minimis origination exception threshold number from five to ten transactions in a 12-month period. The Bureau is persuaded by feedback from several industry commenters that the proposed threshold number of five would likely have been too low to provide relief for managers who occasionally act as loan originators in order, for example, to fill in for individual loan originators who are sick or on vacation.[144] The higher threshold will allow additional managers (or other individuals working for the creditor or loan originator organization) who act as loan originators only on an occasional, one-off basis to be eligible for non-deferred profits-based compensation plans that are not limited by the restrictions in § 1026.36(d)(1)(iv). Without a de minimis exception, for example, a manager or other individual who is a loan originator for a very small number of transactions per year may, depending on the application of the restrictions on non-deferred profits-based compensation under § 1026.36(d)(1)(iv), be ineligible to participate in a company-wide bonus pool or other bonus pool that is determined in part with reference to mortgage-related profits. The Bureau believes this exception is appropriate because the risk that the manager or other individual will steer consumers to particular transaction terms is more attenuated than for individuals working for the creditor or loan originator organization whose loan origination activities constitute a primary or even secondary (as opposed to occasional) portion of their job responsibilities. The steering risk is also more attenuated, because managers or other individuals who act as loan originators for a small number of closed transactions per year are less likely to be able to significantly influence the amount of funds available from which to pay these individuals bonuses or other compensation under non-deferred profits-based compensation plans.

In the proposal, the Bureau solicited comment on the appropriate threshold number for the de minimis origination exception. The Bureau received no quantitative data on the number of originations typically engaged in by managers, however, and little to no anecdotal data generally. The commenters who requested 15 and 25 as the threshold amount did not provide data on why that number was appropriate.

The Bureau has chosen ten as the threshold amount, rather than 15 or 25 as suggested by some commenters, because the Bureau believes those numbers stray too far from a threshold that suggests only occasional loan originator activity (which, in turn, suggests insufficient incentive to steer consumers to different loan terms). The Bureau stated in the proposal that an individual engaged in five or fewer transactions per calendar year is not truly active as an individual loan originator, citing by analogy the TILA provision implemented in § 1026.2(a)(17)(v) providing that a person does not ''regularly extend credit'' unless, for transactions there are five such transactions in a calendar year with respect to consumer credit transactions secured by a dwelling. The Bureau continues to believe that the TILA provision is a useful analogue to determining when an individual loan originator would be active and thus sufficiently incentivized to steer consumers to different loan terms, but the analogue is not determinative, and the Bureau is sensitive to the industry comments regarding the capture of

[143] The commenter posited an example of a branch manager who originates five loans with an aggregate principal amount of $2 million and another branch manager who originates six loans with aggregate principal amount of $1 million.

[144] Some commenters referred to the individuals that the de minimis origination exception is intended in part to cover as ''non-producing managers.'' In this final rule, comment 36(a)–4 has been revised to clarify that a loan originator includes a manager who takes an application, offers, arranges, assists a consumer with obtaining or applying to obtain, negotiate, or otherwise obtain or make a particular extension of credit for another person, if the person receives or expects to receive compensation for these activities. The comment further clarifies that an individual who performs any of these activities in the ordinary course of employment is deemed to be compensated for these activities. Therefore, the de minimis exception is intended to cover producing managers as the term is used in comment 36(a)–1.4.v.

managers under the exception. In light of these countervailing considerations, the Bureau is raising the threshold to ten.

The Bureau is not aware of available data or estimates of the typical number of originations by producing managers. The Bureau is similarly not aware of available data or estimates of the distribution of origination activity by originators of different asset size classes. In aggregate, however, loan originators at depository institutions are estimated to originate 43 loans per year.[145] As such, the Bureau believes that an origination threshold of 10 would not capture a typical individual loan originator who acts as loan originator in a regular or semi-regular capacity for a typical institution of any asset class. In light of the limited data, however, the Bureau does not believe these data provide sufficient evidence to justify raising the threshold number to higher than ten.

The Bureau acknowledges that increasing the threshold number from five to ten may exempt from the restrictions on non-deferred profits-based compensation under § 1026.36(d)(1)(iv) individual loan originators who act as loan originators in a relatively small number of transactions but do so in a regular capacity. The Bureau believes that the steering incentives for such individuals would be minimal because their origination activity is low, regardless of the fact that loan origination is a regular or semi-regular part of their job description, and they thus will not substantially increase the availability of mortgage-related profits or expect to gain much compensation from these profits. Moreover, based on the data noted above, the Bureau does not believe that increasing the threshold number from five to ten would capture more than a marginal amount of these types of additional individual loan originators.

The Bureau has also made some technical changes to the provision. In § 1026.36(d)(1)(iv)(B)(*2*), the words ''payment or contribution'' have been replaced with ''compensation'' to reflect a change in terminology in an earlier portion of the regulatory provision. The phrase ''compensation decision'' has been replaced with ''compensation determination'' to be consistent with the wording of § 1026.36(d)(1)(iv)(B)(*1*) and commentary regarding the time period for which compensation is ''determined.'' In the final rule, comment 36(d)(1)–2.iii.H has been redesignated as comment 36(d)(1)–3.vi and has been revised to reflect the Bureau's decision to raise the de minimis origination exception threshold number from five to ten, including the examples illustrating where certain individual loan originators would fall above or below the threshold. The examples presented in the comment also have been revised to reflect that one of the individual loan originators is a manager, to illustrate that managers will be covered by § 1026.36(d)(1)(iv)(B)(*2*) depending on the circumstances.

In this final rule, proposed comment 36(d)(1)–2.iii.I has been deleted because it is duplicative with other comments providing illustrative examples of the provisions of § 1026.36(d)(1)(iii) and (iv).

36(d)(2) Payments by Persons Other Than the Consumer

36(d)(2)(i) Dual Compensation

Background

Existing § 1026.36(d)(2) restricts loan originators from receiving compensation in connection with a transaction from both the consumer and other persons. As discussed in more detail below, section 1403 of the Dodd-Frank Act amended TILA to codify the same basic prohibition against dual compensation, though it also imposed additional requirements related to consumers' payment of upfront points and fees that could significantly change the rule's scope and impact.

Specifically, § 1026.36(d)(2) currently provides that, if any loan originator receives compensation directly from a consumer in a consumer credit transaction secured by a dwelling: (1) No loan originator may receive compensation from another person in connection with the transaction; and (2) no person who knows or has reason to know of the consumer-paid compensation to the loan originator (other than the consumer) may pay any compensation to a loan originator in connection with the transaction. When the Dodd-Frank Act was enacted, this provision had been proposed but not finalized; the Board subsequently adopted § 1026.36(d)(2) in its 2010 Loan Originator Final Rule, which is discussed in more detail in part I.

Comment 36(d)(2)–1 currently clarifies that the restrictions imposed under § 1026.36(d)(2) relate only to payments, such as commissions, that are specific to and paid solely in connection with the transaction in which the consumer has paid compensation directly to a loan originator. Thus, the phrase ''in connection with the transaction'' as used in § 1026.36(d)(2) does not refer to salaries, hourly wages, or other forms of compensation that are not tied to a specific transaction.

Thus, under existing § 1026.36(d)(2), a loan originator that receives compensation directly from the consumer may not receive compensation in connection with the transaction (*e.g.,* a commission) from any other person (*e.g.,* a creditor). In addition, if any loan originator is paid compensation directly by the consumer in a transaction, no other loan originator may receive compensation in connection with the transaction from a person other than the consumer. Moreover, if any loan originator receives compensation directly from a consumer, no person who knows or has reason to know of the consumer-paid compensation to the loan originator (other than the consumer) may pay any compensation to a loan originator in connection with the transaction. For example, assume that a loan originator that is not a natural person (*i.e.,* a loan originator organization) receives compensation directly from the consumer in a mortgage transaction subject to existing § 1026.36(d)(2). The loan originator organization may not receive compensation in connection with that particular transaction (*e.g.,* a commission) from a person other than the consumer (*e.g.,* the creditor). In addition, because the loan originator organization is a person other than the consumer, the loan originator organization may not pay individual loan originators any compensation in connection with that particular transaction, such as a transaction-specific commission. Consequently, under existing rules, in the example above, the loan originator organization must pay individual loan originators only in the form of a salary or an hourly wage or other compensation that is not tied to the particular transaction. As a result of the 2010 Loan Originator Final Rule, loan originator organizations have expressed concern that currently it is difficult to structure transactions where consumers pay loan originator organizations compensation directly, because it is not economically feasible for the organizations to pay their

[145] Based on data from HMDA and Call Report data, the Bureau estimates that there were approximately 5.6 million closed-end mortgage originations by depository institutions in 2011. Data from the BLS indicate that there were 132,400 loan officers at depository institutions in 2011. Thus, these estimates imply an aggregate ratio of roughly 43 originations per loan originator. Bureau estimates using other methodologies yield similar results. The Bureau also notes that loan originators at the threshold of 10 loans, would earn roughly $19,000 per year assuming compensation of one point per loan and an average loan size of $190,000 (approximately the average loan amount of home-secured mortgages reported in the 2011 HMDA data).

individual loan originators purely a salary or hourly wage, instead of a commission that is tied to the particular transaction either alone or in combination with a base salary.

The Dodd-Frank Act

Section 1403 of the Dodd-Frank Act added TILA section 129B(c) which states that, for any mortgage loan, a mortgage originator generally may not receive from any person other than the consumer any origination fee or charge except bona fide third-party charges not retained by the creditor, mortgage originator, or an affiliate of either. TILA section 129B(c)(2)(A); 12 U.S.C. 1639b(c)(2)(A). Likewise, no person, other than the consumer, who knows or has reason to know that a consumer has directly compensated or will directly compensate a mortgage originator, may pay a mortgage originator any origination fee or charge except bona fide third-party charges as described above. Notwithstanding this general prohibition on payments of any origination fee or charge to a mortgage originator by a person other than the consumer, however, TILA section 129B(c)(2)(B) provides that a mortgage originator may receive from a person other than the consumer an origination fee or charge, and a person other than the consumer may pay a mortgage originator an origination fee or charge, if: (1) ''The mortgage originator does not receive any compensation directly from the consumer;'' and (2) ''the consumer does not make an upfront payment of discount points, origination points, or fees, however denominated (other than bona fide third-party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or originator).'' TILA section 129B(c)(2)(B) also provides the Bureau authority to waive or create exemptions from this prohibition on consumers paying upfront discount points, origination points, or origination fees where it determines that doing so is in the interest of consumers and in the public interest.

The Bureau's Proposal

Setting aside the ban on payment of certain points and fees as explained in more detail below, the Bureau interprets the general restrictions on dual compensation set forth in TILA section 129B(c)(2) to be consistent with the restrictions on dual compensation set forth in existing § 1026.36(d)(2) despite the fact that the statute is structured differently and uses different terminology than existing § 1026.36(d)(2).

Nonetheless, the Bureau proposed several changes to existing § 1026.36(d)(2) (redesignated as § 1026.36(d)(2)(i)) to provide additional clarity and flexibility to loan originators. For example, § 1026.36(d)(2) currently prohibits a loan originator organization that receives compensation directly from a consumer in connection with a transaction from paying compensation in connection with that transaction to individual loan originators (such as its employee loan officers), although the organization could pay compensation that is not tied to the transaction (such as salary or hourly wages) to individual loan originators. As explained in more detail below, the Bureau proposed to revise § 1026.36(d)(2) (redesignated as § 1026.36(d)(2)(i)) to provide that, if a loan originator organization receives compensation directly from a consumer in connection with a transaction, the loan originator organization may pay compensation in connection with the transaction to individual loan originators and the individual loan originators may receive compensation from the loan originator organization. As explained in more detail below, the Bureau believed that allowing loan originator organizations to pay compensation in connection with a transaction to individual loan originators, even if the loan originator organization has received compensation directly from the consumer in that transaction, is consistent with the statutory purpose of ensuring that a loan originator organization is not compensated by both the consumer and the creditor for the same transaction.

As discussed in more detail below, the Bureau also explained in the proposal that it believes the original purpose of the restriction in existing § 1026.36(d)(2) that prevents loan originator organizations from paying compensation in connection with a transaction to individual loan originators if the loan originator organization has received compensation directly from the consumer in that transaction is addressed separately by other revisions pursuant to the Dodd-Frank Act. Under existing § 1026.36(d)(1)(iii), compensation paid directly by a consumer to a loan originator effectively is free to be based on transaction terms or conditions. Consequently, individual loan originators could have incentives to steer a consumer into a transaction where the consumer compensates the loan originator organization directly, resulting in greater compensation to the loan originator organization than it likely would receive if compensated by the creditor subject to the restrictions of § 1026.36(d)(1). The Dodd-Frank Act, however, amended TILA to prohibit compensation based on loan terms even when a consumer is paying compensation directly to a mortgage originator. Thus, under the statute and the final rule, if an individual loan originator receives compensation in connection with the transaction from the loan originator organization (where the loan originator organization receives compensation directly from the consumer), the amount of the compensation paid by the consumer to the loan originator organization, and the amount of the compensation paid by the loan originator organization to the individual loan originator, may not be based on transaction terms.

In addition, the Bureau explained that it believed relaxing the rule might make more loan originator organizations willing to structure transactions where consumers pay loan originator compensation directly. The Bureau believed that this result may enhance the interests of consumers and the public by giving consumers greater flexibility in structuring the payment of loan originator compensation.

The Final Rule

As discussed in more detail below, the final rule adopts the Bureau's proposals relating to dual compensation with some revisions.

Compensation in connection with the transaction. Under existing § 1026.36(d)(2), if any loan originator receives compensation directly from a consumer in a transaction, no person other than the consumer may provide any compensation to a loan originator, directly or indirectly, in connection with that particular credit transaction. The Bureau believes that additional clarification may be needed about the term ''in connection with'' for purposes of § 1026.36(d)(2) (redesignated as § 1026.36(d)(2)(i)). Accordingly, the final rule revises comment 36(d)(2)–1 (redesignated as comment 36(d)(2)(i)–1) to clarify that, for purposes of § 1026.36(d)(2)(i), compensation is considered ''in connection with'' a particular transaction, regardless of whether this compensation is paid before, at, or after consummation. The Bureau believes that limiting the term ''in connection with'' a particular transaction for purposes of § 1026.36(d)(2) to compensation that is paid at or before consummation could allow creditors to evade the restriction in § 1026.36(d)(2) by simply paying the compensation after consummation, to the detriment of consumers.

The Bureau also believes that additional clarification is needed on whether the prohibition on dual compensation in § 1026.36(d)(2) (redesignated as § 1026.36(d)(2)(i)) restricts a creditor from providing any funds for the benefit of the consumer in a transaction, if the loan originator receives compensation directly from a consumer in connection with that transaction. The final rule amends comment 36(d)(2)–1 (redesignated as comment 36(d)(2)(i)–1) to provide that in a transaction where a loan originator receives compensation directly from a consumer, a creditor still may provide funds for the benefit of the consumer in that transaction, provided such funds are applied solely toward costs of the transaction other than loan originator compensation. See the section-by-section analysis of § 1026.36(a)(3) for a discussion of the definition of ''compensation.''

Compensation received directly from the consumer. As discussed above, under existing § 1026.36(d)(2), a loan originator that receives compensation directly from the consumer may not receive compensation in connection with the transaction (*e.g.,* a commission) from any other person (*e.g.,* a creditor). In addition, if *any* loan originator is paid compensation directly by the consumer in a transaction, no *other* loan originator (such as an employee of a loan originator organization) may receive compensation in connection with the transaction from another person. Moreover, if any loan originator receives compensation directly from a consumer, no person who knows or has reason to know of the consumer-paid compensation to the loan originator (other than the consumer) may pay any compensation to a loan originator, directly or indirectly, in connection with the transaction. Existing comment 36(d)(1)–7 interprets when payments to a loan originator are considered compensation received directly from the consumer. As discussed in more detail in the section-by-section analysis of § 1026.36(d)(1)(iii), consistent with TILA section 129B(c)(1), the Bureau proposed to remove existing § 1026.36(d)(1)(iii), which allowed a loan originator to receive compensation based on any of the terms or conditions of a transaction, if the loan originator received compensation directly from the consumer in connection with the transaction and no other person provides compensation to a loan originator in connection with that transaction. The Bureau also proposed to remove the first sentence of existing comment 36(d)(1)–7, which stated that the prohibition in § 1026.36(d)(1)(i) that restricts a loan originator from receiving compensation based on the terms or conditions of a transaction does not apply to transactions in which any loan originator receives compensation directly from the consumer. The Bureau proposed to delete this first sentence as no longer relevant given that the Bureau proposed to remove § 1026.36(d)(1)(iii). The Bureau also proposed to move the other content of this comment to proposed comment 36(d)(2)(i)–2.i; no substantive change was intended.

The Bureau received one comment on proposed comment 36(d)(2)(i)–2.i. One industry commenter that specializes in the financing of manufactured housing indicated that the comment was confusing because its first sentence states that payments to a loan originator from loan proceeds are considered compensation received directly from the consumer, while payments derived from an increased interest rate are not considered compensation received directly from the consumer. The commenter believed that the second sentence of the proposed comment seemed to contradict the first sentence by stating that points paid on the loan by the consumer to the creditor are not considered payments to the loan originator that are received directly from the consumer whether they are paid directly by the consumer (for example, in cash or by check) or out of the loan proceeds. The commenter requested that the Bureau make clear that when a creditor, in establishing a charge to be imposed on a consumer, considers the average cost incurred by the creditor to originate residential mortgage loans of that type (including the compensation paid to an employee in connection with that particular transaction), then that compensation is deemed to be paid by the creditor and will not trigger any dual compensation prohibitions.

This final rule revises the first two sentences of proposed comment 36(d)(2)(i)–2.i, and deletes the third sentence of that proposed comment. The Bureau believes that these revisions will clarify that, while payments *by a consumer to a loan originator* from loan proceeds are considered compensation received directly from the consumer, payments *by the consumer to the creditor* are not considered payments to the loan originator that are received directly from the consumer whether they are paid in cash or out of the loan proceeds.

Existing comment 36(d)(2)–2 references Regulation X, which implements RESPA, and provides that a yield spread premium paid by a creditor to the loan originator may be characterized on the RESPA disclosures as a ''credit'' that will be applied to reduce the consumer's settlement charges, including origination fees. Existing comment 36(d)(2)–2 clarifies that a yield spread premium disclosed in this manner is not considered to be received by the loan originator directly from the consumer for purposes of § 1026.36(d)(2). The Bureau proposed to move this clarification to proposed comment 36(d)(2)(i)–2.ii and revise it, eliminating the reference to yield spread premiums and instead using the terms ''rebate'' and ''credit.'' Rebates are disclosed as ''credits'' under the existing Regulation X disclosure regime.

The Bureau did not receive comments specifically on this aspect of the proposal. This final rule, however, revises proposed comment 36(d)(2)(i)–2.ii to further clarify the intent of the comment. Specifically, comment 36(d)(2)(i)–2.ii as adopted provides that funds from the creditor that will be applied to reduce the consumer's settlement charges, including origination fees paid by a creditor to the loan originator, that are characterized on the disclosures made pursuant to RESPA as a ''credit'' are nevertheless not considered to be received by the loan originator directly from the consumer for purposes of § 1026.36(d)(2)(i).

The Bureau also proposed to add § 1026.36(d)(2)(i)(B) and comment 36(d)(2)(i)–2.iii to provide additional clarity on the meaning of the phrase ''compensation directly from the consumer'' as used in new TILA section 129B(c)(2)(B), as added by section 1403 of the Dodd-Frank Act, and § 1026.36(d)(2) (as redesignated proposed § 1026.36(d)(2)(i)). Mortgage creditors and other industry representatives have raised questions about whether payments to a loan originator on behalf of the consumer by a person other than the creditor are considered compensation received directly from a consumer for purposes of existing § 1026.36(d)(2). For example, non-creditor sellers, home builders, home improvement contractors, or real estate brokers or agents may agree to pay some or all of the consumer's closing costs. Some of this payment may be used to compensate a loan originator. The Bureau proposed in § 1026.36(d)(2)(i)(B) to interpret the phrase ''compensation directly from the consumer,'' as used in new TILA section 129B(c)(2)(B) and proposed § 1026.36(d)(2)(i), to include payments to a loan originator made pursuant to an agreement between the consumer and a person other than the creditor or its affiliates. Proposed comment

36(d)(2)(i)–2.iii would have clarified that whether there is an agreement between the parties will depend on State law. *See* § 1026.2(b)(3). Also, proposed comment 36(d)(2)(i)–2.iii would have clarified that the parties do not have to agree specifically that the payments will be used to pay for the loan originator's compensation, just that the person will make a payment toward the consumer's closing costs. For example, assume that a non-creditor seller has an agreement with the consumer to pay $1,000 of the consumer's closing costs on a transaction. Any of the $1,000 that is used to pay compensation to a loan originator is deemed to be compensation received directly from the consumer, even if the agreement does not specify that some or all of the $1,000 must be used to compensate the loan originator. In such cases, the loan originator would be permitted to receive compensation from both the consumer and the other person who has the agreement with the consumer (but not from any other person).

A few commenters raised concerns about these proposed revisions. A trade group representing mortgage brokers raised concerns that, without guidance on how and where to apply contributions from sellers and others, these proposed revisions would generate uncertainty leading to further frustration of both consumers and industry participants.

Three consumer groups, in a joint letter, indicated that the people the Bureau identifies—such as sellers, home improvement contractors, and home builders—have been implicated in every form of abusive lending. They cited as a risk of this proposal that third parties will simply inflate their charges by the amount of the payment toward the closing costs. They also stated that, in recent years, HUD has spent considerable energy investigating kickback arrangements between creditors and home builders. These consumer groups suggested an alternative to the proposal whereby, if a consumer and a third party have an agreement of the kind envisioned by the proposal, the third party can simply give the consumer a check, rather than permitting these payments to be ''laundered'' through the closing.

After consideration of the comments received, the Bureau has decided to revise proposed § 1026.36(d)(2)(i)(B) to clarify the intent of the provision. Specifically, § 1026.36(d)(2)(i)(B) is revised to provide that compensation received directly from a consumer includes payments to a loan originator made pursuant to an agreement between the consumer and a third party (*i.e.,* the seller or some other person that is not the creditor, loan originator, or an affiliate of either), under which such other person agrees to provide funds toward the consumer's cost of the transaction (including loan originator compensation). This final rule also revises related comments to provide additional interpretation. Specifically, comment 36(d)(2)(i)–2.i is revised to state that payments by the consumer to the creditor are not considered payments to the loan originator that are received directly from the consumer. Accordingly, comment 36(d)(2)(i)–2.iii has been revised to also state that payments in the transaction to the creditor on behalf of the consumer by a person other than the creditor or its affiliates are not considered payments to the loan originator that are received directly from the consumer. As proposed, comment 36(d)(2)(i)–2.iii stated that payments by a person other than the creditor or its affiliates *to the loan originator* pursuant to an agreement with the consumer are compensation directly by the consumer. Comment 36(d)(2)(i)–2.iii has been revised to state also that payments by a person other than the creditor or its affiliates *to the creditor* are not considered payments of compensation to the loan originator directly by the consumer. The Bureau believes that these revisions will help avoid the uncertainty cited by the industry commenters.

With regard to the comments received from several consumer groups discussed above, the Bureau notes that RESPA will still apply to these transactions to prevent illegal kickbacks, including kickbacks between the loan originator and a person that is not the creditor or its affiliate. For purposes of the dual compensation rules set forth in § 1026.36(d)(2), the Bureau continues to believe that arrangements where a person other than a creditor or its affiliate pays compensation to a loan originator on behalf of the consumer do not raise the same concerns as when that compensation is being paid by the creditor or its affiliates. The Bureau believes that one of the primary goals of section 1403 of the Dodd-Frank Act is to prevent a loan originator from receiving compensation both directly from a consumer and from the creditor or its affiliates, which more easily may occur without the consumer's knowledge. Allowing loan originators to receive compensation from both the consumer and the creditor can create inherent conflicts of interest, of which consumers may not be aware. When a loan originator organization charges the consumer a direct fee for originating the consumer's mortgage loan, this charge may lead the consumer to infer that the broker accepts the consumer-paid fee to represent the consumer's financial interests. Consumers also may reasonably believe that the fee they pay is the originator's sole compensation. This may lead reasonable consumers erroneously to believe that loan originators are working on their behalf and are under a legal or ethical obligation to help them obtain the most favorable loan terms and conditions. Consumers may regard loan originators as ''trusted advisors'' or ''hired experts,'' and consequently rely on originators' advice. Consumers who regard loan originators in this manner may be less likely to shop or negotiate to assure themselves that they are being offered competitive mortgage terms.

The Bureau believes, however, that the statutory goals discussed above are facilitated by § 1026.36(d)(2)(i)(B) and comment 36(d)(2)(i)–2.iii. Under the final rule, a payment by a person other than a creditor or its affiliates to the loan originator is considered received directly from the consumer for purposes of § 1026.36(d)(2) only if the payment is made pursuant to an agreement between the consumer and that person. Thus, if there is an agreement, the consumer will be aware of the payment to the loan originator. In addition, because this payment to the loan originator would be considered compensation directly received from the consumer, the consumer remains the only person permitted to pay compensation in connection with the transaction to the loan originator, in accordance with § 1026.36(d)(2)(i). For example, the creditor or its affiliates could not pay compensation in connection with the transaction to the loan originator.

Moreover, the Bureau believes that § 1026.36(d)(2)(i)(B) and comment 36(d)(2)(i)–2.iii also benefit consumers in transactions where the consumer directly pays compensation to the loan originator. If a payment to the loan originator by a person other than the creditor or its affiliates were not deemed to be compensation coming directly from the consumer, the person would be prevented under existing § 1026.36(d)(2) from paying some of the compensation to the loan originator on behalf of the consumer pursuant to an agreement, if the consumer also pays some of the compensation to the loan originator. Thus, consumers could not receive the benefit of contributions by persons other than the creditor or its affiliates in these transactions unless such contributions were at least large enough to cover the loan originator's entire compensation.

As adopted in this final rule, under § 1026.36(d)(2)(i)(B) and comment 36(d)(2)(i)–2.iii, payment of loan originator compensation by an affiliate of the creditor, including a seller, home builder, or home improvement contractor, to a loan originator is not deemed to be made directly by the consumer for purposes of § 1026.36(d)(2)(i), even if the payment is made pursuant to an agreement between the consumer and the affiliate. That is, for example, if a home builder is an affiliate of a creditor, § 1026.36(d)(2)(i) prohibits this person from paying compensation in connection with a transaction if a consumer pays compensation to the loan originator in connection with the transaction. This final rule is consistent with existing § 1026.36(d)(3), which states that for purposes of § 1026.36(d) affiliates must be treated as a single ''person.'' In addition, considering payments of compensation to a loan originator by an affiliate of the creditor to be payments made directly by the consumer could allow creditors to circumvent the restrictions in § 1026.36(d)(2)(i). A creditor could provide compensation to the loan originator indirectly by structuring the arrangement such that the creditor pays the affiliate and the affiliate pays the loan originator.

Prohibition on a loan originator receiving compensation in connection with a transaction from both the consumer and a person other than the consumer. As discussed above, under existing § 1026.36(d)(2), a loan originator that receives compensation directly from the consumer in a closed-end consumer credit transaction secured by a dwelling may not receive compensation from any other person in connection with the transaction. In addition, in such cases, no person who knows or has reason to know of the consumer-paid compensation to the loan originator (other than the consumer) may pay any compensation to the loan originator in connection with the transaction. Existing comment 36(d)(2)–1 provides that, for purposes of § 1026.36(d)(2), compensation that is ''in connection with the transaction'' means payments, such as commissions, that are specific to, and paid solely in connection with, the transaction in which the consumer has paid compensation directly to a loan originator. To illustrate: Assume that a loan originator organization receives compensation directly from the consumer in a mortgage transaction subject to § 1026.36(d)(2). Because the loan originator organization is receiving compensation directly from the consumer in this transaction, the loan originator organization is prohibited under § 1026.36(d)(2) from receiving compensation in connection with that particular transaction (*e.g.,* a commission) from a person other than the consumer (*e.g.,* the creditor). Similarly, a person other than the consumer may not pay the loan originator any compensation in connection with the transaction.

The Bureau generally proposed to retain the prohibition described above in existing § 1026.36(d)(2) (redesignated as proposed § 1026.36(d)(2)(i)), as consistent with the restriction on dual compensation set forth in TILA section 129B(c)(2). Specifically, TILA section 129B(c)(2)(A) provides that, for any mortgage loan, a mortgage originator generally may not receive from any person other than the consumer any origination fee or charge except bona fide third-party charges not retained by the creditor, the mortgage originator, or an affiliate of either. Likewise, no person, other than the consumer, who knows or has reason to know that a consumer has directly compensated or will directly compensate a mortgage originator, may pay a mortgage originator any origination fee or charge except bona fide third-party charges as described above. In addition, TILA section 129B(c)(2)(B) provides that a mortgage originator may receive an origination fee or charge from a person other than the consumer if, among other things, the mortgage originator does not receive any compensation directly from the consumer.

Pursuant to its authority under TILA section 105(a) to effectuate the purposes of TILA and facilitate compliance with TILA, in the proposal, the Bureau proposed to interpret ''origination fee or charge'' to mean compensation that is paid ''in connection with the transaction,'' such as commissions, that are specific to, and paid solely in connection with, the transaction. In the proposal, the Bureau explained its belief that, if Congress intended the prohibitions on dual compensation to apply to salary or hourly wages that are not tied to a specific transaction, Congress would have used the term ''compensation'' in TILA section 129B(c)(2), as it did in TILA section 129B(c)(1), which prohibits compensation based on loan terms. Thus, the Bureau explained that, like existing § 1026.36(d)(2), TILA section 129B(c)(2) prohibits a mortgage originator that receives compensation directly from the consumer in a closed-end consumer credit transaction secured by a dwelling from receiving compensation, directly or indirectly, from any person other than the consumer in connection with the transaction.

Several industry trade groups and individual creditors disagreed with the Bureau's interpretation of the statutory term ''origination fee or charge.'' Two trade groups believed that the Bureau should interpret the term ''origination charge or fee'' to include compensation paid in connection with a transaction only when that compensation is paid by the consumer to the creditor or the loan originator organization, or is paid by the creditor to the loan originator organization. These trade groups argued that the term ''origination fee or charge'' commonly refers to an amount paid to a creditor or loan originator organization, and is not generally understood to mean an amount of compensation paid to an individual loan originator. In addition, one of these trade groups indicated that there is no indication that Congress intended ''origination fee or charge'' to be considered compensation in connection with a transaction. This trade group commenter argued that Congress separately uses the term ''origination fee or charge,'' the term ''compensation,'' and the term ''compensation that varies based on the terms of the loan,'' and that therefore, if Congress intended an origination fee or charge to be considered compensation in connection with a transaction, it could easily have written the statute that way. The other trade group argued that the statute's use of a variety of specific terms (*i.e.,* ''origination fees or charges,'' ''compensation,'' and ''discount points, origination points, or fees'') in TILA section 129B(c)(2) indicates that the provision was intended to apply only to circumstances in which a broker is involved and the creditor seeks to pay the broker's compensation. This commenter argued that, under that scenario, TILA section 129B(c)(2) would make sense, as typically a broker may receive amounts labeled as ''origination fees or charges,'' or amounts labeled as ''compensation.'' This commenter also argued that it is unlikely Congress intended to address circumstances in which a third party pays an origination fee or charge to an individual loan originator of the creditor, which is not a common practice.

In addition, a creditor commenter argued that the Bureau should interpret ''origination fee or charge'' to exclude compensation paid in connection with a transaction by a creditor to an individual loan originator. The creditor commenter noted that Regulation Z treats an origination fee or charge paid by the consumer to the creditor as a part of the finance charge but excludes salaries and commissions paid by creditors to retail loan originators from the finance charge. This commenter pointed out that other consumer credit laws and regulations, including statutes and regulations now administered by the Bureau, do not use the terms ''origination fee'' and ''charge'' to cover salaries or commissions paid to retail loan originators.

The Bureau continues to believe that the best interpretation of the statutory term ''origination fee or charge'' is that it means compensation that is paid ''in connection with the transaction,'' such as commissions, that are specific to, and paid solely in connection with, the transaction. While the finance charge includes payments by the consumer to the creditor or mortgage broker, the Bureau does not believe that the finance charge is dispositive or, accordingly, that limiting the term ''origination fee or charge'' to payments by the consumer to the creditor or mortgage broker for purposes of this statutory provision is appropriate. TILA section 129B(c)(2) clearly contemplates that an ''origination fee or charge'' includes payments to a loan originator by a person other than the consumer. The provision in TILA section 129B(c)(2) prohibiting a loan originator from receiving an ''origination fee or charge'' from a person other than the consumer except in certain circumstances would be meaningless if the term ''origination fee or charge'' did not include payments from a person other than the consumer to a loan originator.

Because the term ''origination fee or charge'' must include payments from a person other than the consumer to at least some loan originators, the Bureau believes that the better reading of this term is to treat payments to loan originators consistently, regardless of whether the loan originator is an individual loan originator or a loan originator organization. Otherwise, compensation paid in connection with a transaction (such as a commission) paid by a creditor to a loan originator organization would be considered an ''origination fee or charge,'' but a similar payment to an individual loan originator by the creditor would not be considered an ''origination fee or charge.'' The Bureau notes that other provisions in TILA section 129B(c), such as the prohibition on loan originators receiving compensation based on loan terms, apply to loan originators uniformly, regardless of whether the loan originator is an individual loan originator or a loan originator organization.

TILA section 129B(c)(2) does not prohibit a mortgage originator from receiving payments from a person other than the consumer for bona fide third-party charges not retained by the creditor, mortgage originator, or an affiliate of the creditor or mortgage originator, even if the mortgage originator receives compensation directly from the consumer. For example, assume that a loan originator receives compensation directly from a consumer in a transaction. TILA section 129B(c)(2) does not bar the loan originator from receiving payment from a person other than the consumer (*e.g.,* a creditor) for bona fide and reasonable charges, such as credit reports, where those amounts are not retained by the loan originator but are paid to a third party that is not the creditor, its affiliate, or the affiliate of the loan originator. Because the loan originator does not retain such charges, they are not considered part of the loan originator's compensation for purposes of § 1026.36(d).

Consistent with TILA section 129B(c)(2), the Bureau proposed to amend existing comment 36(d)(1)–1.iii (redesignated as proposed comment 36(a)–5.iii) to clarify that the term ''compensation'' does not include amounts a loan originator receives as payment for bona fide and reasonable charges, such as credit reports, where those amounts are not retained by the loan originator but are paid to a third party that is not the creditor, its affiliate, or the affiliate of the loan originator. Thus, under proposed § 1026.36(d)(2)(i) and comment 36(a)–5.iii, a loan originator that receives compensation directly from a consumer would be permitted to receive a payment from a person other than the consumer for bona fide and reasonable charges where those amounts are not retained by the loan originator but are paid to a third party that is not the creditor, its affiliate, or the affiliate of the loan originator.

For example, assume a loan originator receives compensation directly from a consumer in a transaction. Further assume the loan originator charges the consumer $25 for a credit report provided by a third party that is not the creditor, its affiliate, or the affiliate of the loan originator, and this fee is bona fide and reasonable. Assume also that the $25 for the credit report is paid by the creditor but the loan originator does not retain this $25. Instead, the loan originator pays the $25 to the third party for the credit report. The loan originator in that transaction is not prohibited by proposed § 1026.36(d)(2)(i) from receiving the $25 from the creditor, even though the consumer paid compensation to the loan originator in the transaction.

In addition, under proposed § 1026.36(d)(2)(i) and comment 36(a)–5.iii, a loan originator that receives compensation in connection with a transaction from a person other than the consumer could receive a payment from the consumer for a bona fide and reasonable charge where the amount of that charge is not retained by the loan originator but is paid to a third party that is not the creditor, its affiliate, or the affiliate of the loan originator. For example, assume a loan originator receives compensation in connection with a transaction from a creditor. Further assume the loan originator charges the consumer $25 for a credit report provided by a third party that is not the creditor, its affiliate, or the affiliate of the loan originator, and this fee is bona fide and reasonable. Assume the $25 for the credit report is paid by the consumer to the loan originator but the loan originator does not retain this $25. Instead, the loan originator pays the $25 to the third party for the credit report. The loan originator in that transaction is not prohibited by proposed § 1026.36(d)(2)(i) from receiving the $25 from the consumer, even though the creditor paid compensation to the loan originator in connection with the transaction.

As discussed in more detail in the section-by-section analysis of proposed § 1026.36(a), proposed comment 36(a)–5.iii also recognized that, in some cases, amounts received for payment for such third-party charges may exceed the actual charge because, for example, the loan originator cannot determine precisely what the actual charge will be at the time the charge is imposed and instead uses average charge pricing (in accordance with RESPA). In such a case, under proposed comment 36(a)–5.iii, the difference retained by the originator would not have been deemed compensation if the third-party charge collected from the consumer or a person other than the consumer was bona fide and reasonable, and also complied with State and other applicable law. On the other hand, if the originator marks up a third-party charge and retains the difference between the actual charge and the marked-up charge (a practice known as ''upcharging''), the amount retained is compensation for purposes of § 1026.36(d) and (e). Proposed comment 36(a)–5.iii contained two illustrations, which are discussed in more detail in the section-by-section analysis of § 1026.36(a).

As discussed in more detail in the section-by-section analysis of § 1026.36(a), the final rule adopts 36(a)–

5.iii as proposed in substance, except that the interpretation discussing situations where the amounts received for payment for third-party charges exceeds the actual charge has been moved to comment 36(a)–5.v.

In addition, the final rule adds comment 36(a)–5.iv to clarify whether payments for services that are not loan origination activities are compensation under § 1026.36(a)(3). As adopted in the final rule, comment 36(a)–5.iv.A clarifies that the term ''compensation'' for purposes of § 1026.36(a)(3) does not include: (1) A payment received by a loan originator organization for bona fide and reasonable charges for services it performs that are not loan origination activities; (2) a payment received by an affiliate of a loan originator organization for bona fide and reasonable charges for services it performs that are not loan origination activities; or (3) a payment received by a loan originator organization for bona fide and reasonable charges for services that are not loan origination activities where those amounts are not retained by the loan originator organization but are paid to the creditor, its affiliate, or the affiliate of the loan originator organization. Comment 36(a)–5.iv.C as adopted clarifies that loan origination activities, for purposes of that comment means activities described in § 1026.36(a)(1)(i) (*e.g.,* taking an application, arranging, assisting, offering, negotiating, or otherwise obtaining an extension of consumer credit for another person) that would make a person performing those activities for compensation a loan originator as defined in § 1026.36(a)(1)(i).

Thus, under § 1026.36(d)(2)(i) and comment 36(a)–5.iv as adopted in the final rule, a loan originator organization that receives compensation in connection with a transaction from a person other than the consumer (*e.g.,* creditor) would not be prohibited under § 1026.36(d)(2)(i) from receiving a payment from the consumer for a bona fide and reasonable charge for services that are not loan origination activities where (1) the loan originator organization itself performs those services; or (2) the payment amount is not retained by the loan originator organization but is paid to the creditor, its affiliate, or the affiliate of the loan originator organization, as described in comment 36(a)–5.iv.A.*1* and .*3.* Likewise, a loan originator organization that receives compensation directly from a consumer would not be prohibited under § 1026.36(d)(2)(i) from receiving a payment from a person other than the consumer for bona fide and reasonable charges for services that are not loan origination activities as described above.

In addition, a loan originator organization's affiliate would not be prohibited under § 1026.36(d)(2)(i) from receiving from a consumer a payment for bona fide and reasonable charges for services it performs that are not loan origination activities; as described in comment 36(a)–5.iv.A.*2,* even if the loan originator organization receives compensation in connection with a transaction from a person other than the consumer (*e.g.,* the creditor). Similarly, a loan originator organization's affiliate would not be prohibited under § 1026.36(d)(2)(i) from receiving from a person other than the consumer (*e.g.,* a creditor) a payment for bona fide and reasonable charges for services the affiliate performs that are not loan origination activities; as described in comment 36(a)–5.iv.A.*2,* even if the loan originator organization receives compensation directly from a consumer in connection with a transaction.

Moreover, as discussed above, the final rule moves the interpretation in proposed comment 36(a)–5.iii discussing situations where the amounts received for payment for third-party charges exceeds the actual charge to comment 36(a)–5.v, and revises it. The final rule also extends this interpretation to amounts received by the loan originator organization for payment for services that are not loan origination activities where those amounts are not retained by the loan originator but are paid to the creditor, its affiliate, or the affiliate of the loan originator organization. See the section-by-section analysis of § 1026.36(a)(3) for a more detailed discussion.

If any loan originator receives compensation directly from the consumer, no other loan originator may receive compensation in connection with the transaction. Under existing § 1026.36(d)(2), if any loan originator is paid compensation directly by the consumer in a transaction, no other loan originator may receive compensation in connection with the transaction from a person other than the consumer. For example, assume that a loan originator organization receives compensation directly from the consumer in a mortgage transaction subject to § 1026.36(d)(2). The loan originator organization may not receive compensation in connection with the transaction (*e.g.,* a commission) from a person other than the consumer (*e.g.,* the creditor). In addition, the loan originator organization may not pay individual loan originators any transaction-specific compensation, such as commissions, in connection with that particular transaction. Nonetheless, the loan originator organization may pay individual loan originators a salary or hourly wage or other compensation that is not tied to the particular transaction. *See* existing comment 36(d)(2)–1. In addition, a person other than the consumer (*e.g.,* the creditor) may not pay compensation in connection with the transaction to any loan originator, such as a loan originator that is employed by the creditor or by the loan originator organization.

TILA section 129B(c)(2), which was added by section 1403 of the Dodd-Frank Act, generally is consistent with the above prohibition in existing § 1026.36(d)(2) (redesignated as proposed § 1026.36(d)(2)(i)). 12 U.S.C. 1639b(c)(2). TILA section 129B(c)(2)(B) provides that a mortgage originator may receive from a person other than the consumer an origination fee or charge, and a person other than the consumer may pay a mortgage originator an origination fee or charge, if: (1) ''the mortgage originator does not receive any compensation directly from the consumer;'' and (2) ''the consumer does not make an upfront payment of discount points, origination points, or fees, however denominated (other than bona fide third-party charges not retained by the mortgage originator, creditor, or an affiliate of the creditor or originator).'' As discussed above, the Bureau interprets ''origination fee or charge'' to mean compensation that is paid ''in connection with the transaction,'' such as commissions, that are specific to, and paid solely in connection with, the transaction. The individual loan originator is the one that is receiving compensation in connection with a transaction from a person other than the consumer, namely the loan originator organization. Thus, TILA section 129B(c)(2)(B) permits the individual loan originator to receive compensation tied to the transaction from the loan originator organization if: (1) The individual loan originator does not receive any compensation directly from the consumer; and (2) the consumer does not make an upfront payment of discount points, origination points, or origination fees, however denominated (other than bona fide third-party charges not retained by the individual loan originator, creditor, or an affiliate of the creditor or originator). The individual loan originator is not deemed to be receiving compensation in connection with the transaction from a consumer simply because the loan originator organization is receiving compensation from the consumer in connection with the transaction. The loan originator organization and the individual loan originator are separate persons. Nonetheless, the consumer is making ''an upfront payment of discount points, origination points, or fees'' in the transaction when it pays the loan originator organization compensation. The payment of the origination point or fee by the consumer to the loan originator organization is not a bona fide third-party charge under TILA section 129B(c)(2)(B)(ii). Thus, because the loan originator organization has received an upfront payment of origination points or fees from the consumer in the transaction, unless the Bureau exercises its exemption authority as discussed in more detail below, no loan originator (including an individual loan originator) may receive compensation tied to the transaction from a person other than the consumer.

Nonetheless, TILA section 129B(c)(2)(B) also provides the Bureau authority to waive or create exemptions from this prohibition on consumers paying upfront discount points, origination points or origination fees, where it determines that doing so is in the interest of consumers and in the public interest. Pursuant to this waiver or exemption authority, the Bureau proposed to add § 1026.36(d)(2)(i)(C) to provide that, even if a loan originator organization receives compensation directly from a consumer in connection with a transaction (*i.e.,* in the form of the upfront payment of discount points, origination points or origination fees), the loan originator organization may pay compensation to individual loan originators, and the individual loan originators may receive compensation from the loan originator organization (but the individual loan originators may not receive compensation directly from the consumer). The Bureau also proposed to amend comment 36(d)(2)–1 (redesignated as proposed comment 36(d)(2)(i)–1) to be consistent with proposed § 1026.36(d)(2)(i)(C).

In the supplementary information to the proposal, the Bureau stated its belief that the risk of harm to consumers that the existing restriction was intended to address would be likely no longer present, in light of new TILA section 129B(c)(1). Under existing § 1026.36(d)(1)(iii), compensation paid directly by a consumer to a loan originator is permitted to be based on transaction terms or conditions. Thus, if a loan originator organization were allowed to pay an individual loan originator it employs a commission in connection with a transaction, the individual loan originator could have incentives to steer the consumer into a loan with terms and conditions that would produce greater compensation to the loan originator organization, and the individual loan originator, because of this steering, could receive greater compensation if he or she were allowed to receive compensation in connection with the transaction. However, the risk is now expressly addressed by the Dodd-Frank Act. Specifically, TILA section 129B(c)(1), as added by section 1403 of the Dodd-Frank Act, prohibits any compensation based on loan terms, including compensation paid by a consumer directly to a mortgage originator. 12 U.S.C. 1639b(c)(1). Thus, pursuant to TILA section 129B(c)(1), and under proposed § 1026.36(d)(1) as amended in this final rule, even if an individual loan originator is permitted to receive compensation in connection with the transaction from the loan originator organization where the loan originator organization receives compensation directly from the consumer, the amount of the compensation paid by the consumer to the loan originator organization, and the amount of the compensation paid by the loan originator organization to the individual loan originator, cannot be based on transaction terms.

In the supplementary information to the proposal, the Bureau also stated its belief that it would be in the interest of consumers and in the public interest to allow loan originator organizations to pay compensation in connection with the transaction to individual loan originators, even when the loan originator organization is receiving compensation directly from the consumer. As discussed above, the Bureau believed the risk of the harm to the consumer that the restriction was intended to address would be remedied by the statutory amendment prohibiting even compensation that is paid by the consumer from being based on the terms of the transaction. With that protection in place, allowing this type of compensation to the individual loan originator no longer would present the same risk to the consumer of being steered into a transaction involving direct compensation from the consumer because both the loan originator organization and the individual loan originator can realize greater compensation. In addition, with this proposed revision, more loan originator organizations might be willing to structure transactions where consumers pay loan originator compensation directly. Loan originator organizations had expressed concern that currently it is difficult to structure transactions where consumers pay loan originator organizations compensation directly, because it is not economically feasible for the organizations to pay their individual loan originators purely a salary or hourly wage, instead of a commission that is tied to the particular transaction either alone or in combination with a base salary. The Bureau believed that this proposal would enhance the interests of consumers and the public by giving consumers greater flexibility in structuring the payment of loan originator compensation. In a transaction where the consumer pays compensation directly to the loan originator, the amount of the compensation may be more transparent to the consumer. In addition, in these transactions, the consumer may have more flexibility to choose the pricing of the loan. In a transaction where the consumer pays compensation directly to the loan originator, the consumer would know the amount of the loan originator compensation and could pay all of that compensation up front, rather than the creditor determining the compensation and recovering the cost of that compensation from the consumer through the rate, or a combination of the rate and upfront origination points or fees.

The Bureau received comments from two trade groups representing mortgage brokers, which favored this aspect of the proposal. In addition, in the Bureau's outreach, consumer groups agreed that loan originator organizations that receive compensation directly from a consumer in a transaction should be permitted to pay individual loan originators that work for the organization compensation in connection with the transaction, such as a commission. For the reasons discussed above, the final rule adopts § 1026.36(d)(2)(i)(C) and related provisions in comment 36(d)(2)(i)–1 as proposed. The Bureau has determined that it is in the interest of consumers and in the public interest to allow a loan originator organization to pay individual loan originators compensation in connection with the transaction. It is in the public interest even when the loan originator organization has received compensation in connection with the transaction directly from the consumer, given that neither the organization's nor the individual originator's compensation may be based on the terms of the transaction.

36(d)(2)(ii) Exemption

The Dodd-Frank Act

The Dodd-Frank Act contains a number of discrete provisions addressing points and fees paid by consumers in connection with mortgages. Section 1412 of the Dodd-Frank Act adds new TILA section 129C(b) which defines the criteria for a ''qualified mortgage'' as to which there is a presumption of compliance with the new ability-to-repay rules prescribed in accordance with TILA section 129C(a), as added by section 1411 of the Dodd-Frank Act. Under new TILA section 129C(b), one of the criteria for a qualified mortgage is that the total ''points and fees'' paid do not exceed 3 percent of the loan amount.[146] *See* TILA section 129C(b)(2)(A)(vii), as added by section 1412 of the Dodd-Frank Act. In making this calculation, up to two ''bona fide discount points'' may be excluded from the 3 percent threshold.[147] TILA section 129C(b)(2)(C)(ii). In a similar vein, section 1431 of the Dodd-Frank Act amends TILA section 103(aa)(1) to create a new definition of ''high cost mortgage.'' [148] Under that new definition, a mortgage qualifies as a ''high cost mortgage'' if any of the prescribed coverage tests are met, including if the ''points and fees'' charged on the mortgage exceed defined thresholds.[149] TILA section 103(bb)(1). For these purposes too, up to two ''bona fide discount points'' may be excluded.[150] TILA section 103(dd).

At the same time that Congress enacted these provisions, new TILA section 129B(c)(2) was added by section 1403 of the Dodd-Frank Act. That new TILA section provides in relevant part that a mortgage originator can receive an ''origination fee or charge'' from someone other than a consumer (*e.g.* from a creditor or loan originator organization) if, but only if, ''the mortgage originator does not receive any compensation directly from the consumer'' and the consumer ''does not make an upfront payment of discount points, origination points, or fees (other than bona fide third-party charges not retained by the mortgage originator, creditor or an affiliate of the creditor or originator'').'' However, TILA section 129B(c)(2)(B), as amended by section 1100A of the Dodd-Frank Act, also provides the Bureau authority to waive or create exemptions from this prohibition on consumers paying upfront discount points, origination points or origination fees where the Bureau determines that doing so ''is in the interest of consumers and in the public interest.''

The Bureau understands and interprets the phrase ''origination fee or charge'' as used in new TILA section 129B(c)(2) to mean compensation that is paid ''in connection with the transaction,'' such as commissions that are specific to, and paid solely in connection with, the transaction. Thus, if the statutory ban were allowed to go into effect as it reads, the prohibition in TILA section 129B(c)(2)(B)(ii) on the consumer paying upfront discount points, origination points, or origination fees would apply in residential mortgage transactions where: (1) The creditor pays compensation in connection with the transaction (*e.g.,* a commission) to individual loan originators, such as the creditor's employees; (2) the creditor pays a loan originator organization compensation in connection with a transaction, regardless of how the loan originator organization pays compensation to individual loan originators; and (3) the loan originator organization receives compensation directly from the consumer in a transaction and pays individual loan originators compensation in connection with the transaction.[151] The prohibition in TILA section 129B(c)(2)(B)(ii) on the consumer paying upfront discount points, origination points, or origination fees in a residential mortgage transaction generally would not apply where: (1) The creditor pays individual loan originators, such as the creditor's employees, only in the form of a salary, hourly wage or other compensation that is not tied to the particular transaction; or (2) the loan originator organization receives compensation directly from the consumer and pays individual loan originators that work for the organization only in the form of a salary, hourly wage, or other compensation that is not tied to the particular transaction.

The Bureau understands that in most mortgage transactions today, loan originators typically receive compensation tied to a particular transaction (such as a commission) from a person other than the consumer. For example, in transactions that involve loan originator organizations, creditors typically pay a commission to the loan originator organization. In addition, in transactions that do not involve loan originator organizations, creditors typically pay a commission to the individual loan originators that work for the creditors. Thus, absent a waiver or exemption by the Bureau, substantially all mortgage transactions would be covered by TILA section 129B(c)(2) and would be subject to the statutory ban on upfront points and fees.

Such a ban on upfront points and fees would have two foreseeable impacts. First, the ban would result in a predictable increase in mortgage interest rates. Creditors incur significant costs in originating a mortgage, including marketing, sales, underwriting, and closing costs. Typically, creditors recover some or all of those costs through upfront charges paid by the consumer. These charges can take the form of flat fees (such as an application fee or underwriting fee) or fees stated as a percentage of the mortgage (''origination points''). If creditors were prohibited from assessing these upfront charges, creditors would necessarily need to increase the interest rate on the loan to recoup the upfront costs. Creditors who hold loans in portfolio would then earn back these fees over time through higher monthly payments; creditors who sell loans into the secondary market would expect to earn through the sale what would otherwise have been earned through upfront points and fees.

Second, implementation of the statutory ban on points and fees would necessarily limit the range of pricing options available to consumers. Creditors today typically offer a variety of pricing options on closed-end mortgages, such that consumers generally have the ability to buy down the interest rate on a loan by paying ''discount points.'' *i.e.,* upfront charges, stated as a percentage of the loan amount, and offered in return for a reduction in the interest rate. For creditors who hold loans in portfolio, discount points are intended to make up

[146] The term ''points and fees'' for purposes of new TILA section 129C(b) is defined in new TILA section 129C(b)(2)(C), as added by section 1412 of the Dodd-Frank Act.

[147] The term ''bona fide discount points'' for purposes of new TILA section 129C is defined in new TILA section 129C(b)(2)(C)(iii).

[148] The Dodd-Frank Act amends existing TILA section 103(aa) and renumbers it as section 103(bb).

[149] The term ''points and fees'' for purposes of TILA section 103(bb)(1) is defined in TILA section 103(bb)(4), as revised by section 1431 of the Dodd-Frank Act.

[150] The term ''bona fide discount points'' for purposes of TILA section 103(bb)(1) is defined in new TILA section 103(dd), as added by section 1431 of the Dodd-Frank Act.

[151] In this final rule, the Bureau uses its exemption authority in TILA section 129B(c)(2)(B)(ii) to permit a loan originator organization to pay compensation in connection with a transaction to individual loan originators, even if the loan originator organization received compensation directly from the consumer, so long as the individual loan originator does not receive compensation directly from the consumer. *See* the section-by-section analysis of § 1026.36(d)(2)(i) for a detailed discussion. Nonetheless, these transactions would be subject to the restriction on upfront points and fees in TILA section 129B(c)(2)(B)(ii), unless the Bureau exercises its exemption authority.

for the revenue that will be foregone over time due to lower monthly payments; for creditors who sell loans into the secondary market, the discount points are designed to compensate for the lower purchase price that the mortgage will attract because of its lower interest rate. In a similar vein, many creditors offer consumers the opportunity to, in essence, buy ''up'' the interest rate in order to reduce or eliminate the upfront costs that would otherwise be assessed. If the statutory ban were allowed to go into effect, creditors would no longer be able to offer pricing options to consumers in any transaction in which a loan originator is paid compensation (*e.g.,* commission) tied to the transaction.

The Bureau's Proposal

In developing its proposal, the Bureau concluded that, in light of concerns about the impact of the statutory ban on the price of mortgages, the range of consumers' choices in mortgage pricing, and consumers' access to credit, it would not be in the interest of consumers or in the public interest to permit the prohibition to take effect. The Bureau sought instead to develop an alternative which would establish conditions under which upfront points and fees could be charged that would better serve the interest of consumers and the public interest than simply waiving the prohibition or allowing it to take effect.

During the Small Business Review Panel process, as discussed in part II, the Bureau sought comment on an alternative which would have allowed creditors to charge discount points and origination fees that could not vary with the size of the transaction (*i.e.,* flat fees) but would not have permitted creditors to charge origination points. The alternative would have also required creditors to provide consumers with a bona fide reduction in the interest rate for each discount point paid and to offer an option of a no discount point loan. The intent of this alternative was to address potential consumer confusion between discount points, which are paid by the consumer at the consumer's option to obtain a reduction in the interest rate, and other origination charges which the originator assesses. The Small Entity Representatives who participated in the Small Business Review Panel process were unanimous in opposing the requirement that fees could not vary with the size of the transaction and generally opposed the bona fide discount point requirement. The Bureau also reviewed the alternative with various industry and consumer stakeholders. The industry stakeholders were also generally opposed to both the requirement that fees could not vary with the size of the transaction and the bona fide discount point fee requirement, while consumer groups held mixed views. As a result of the lack of general support for the Bureau's approach to flat fees, the view that some costs do vary with the size of the transaction, and the fact that the distinction between origination and discount points may not be the most relevant one from the consumer's perspective, the Bureau abandoned the flat fee aspect of the alternative in developing its proposal.

Instead, proposed § 1026.36(d)(2)(ii) would have generally required that, before a creditor or loan originator organization may impose upfront points or fees on a consumer in a closed-end mortgage transaction in which the creditor or loan originator organization will also pay a loan originator compensation tied to the transaction, the creditor must make available to the consumer a comparable, alternative loan with no upfront discount points, origination points, or origination fees that are retained by the creditor, broker, or an affiliate of either (a ''zero-zero alternative''). The requirement would not have been triggered if the only upfront charges paid by a consumer are charges that are passed on to independent third parties that are not affiliated with the creditor or loan originator organization. The requirement also would not have applied where the consumer is unlikely to qualify for the zero-zero alternative. To facilitate shopping based on the zero-zero alternative, the proposal would have provided a safe harbor for compliance with the requirement to make available the zero-zero alternative to a consumer if any time prior to providing the disclosures required by RESPA after application that the creditor provides a consumer an individualized quote for the interest rate or other key terms for a loan that includes upfront points and fees, the creditor also provides a quote for a zero-zero alternative.

Thus, the Bureau proposed to structure the use of its exemption authority to enable consumers to receive the benefits of obtaining loans that do not include discount points, origination points or origination fees, while preserving consumers' ability to choose a loan with upfront points and fees. The Bureau believed the proposal would address the problems in the current mortgage market that the Bureau believes the prohibition on discount points, origination points or origination fees was designed to address by advancing two goals: (1) Facilitating consumer shopping by enhancing the ability of consumers to make comparisons using transactions that do not include discount points, origination points or origination fees available from different creditors as a basis for comparison; and (2) enhancing consumer decision-making by facilitating a consumer's ability to understand and make meaningful trade-offs on transactions available from a particular creditor of paying discount points, origination points or origination fees in exchange for a lower interest rate. Underlying both these goals was the concern that some consumers may be harmed by paying points and fees in certain circumstances.

The Bureau also sought comment on a number of related issues, including:

- Whether the Bureau should adopt a ''bona fide'' requirement to ensure that consumers receive value in return for paying upfront points and/or fees and, if so, the relative merits of several alternatives on the details of such a requirement;
- Whether additional adjustments to the proposal concerning the treatment of affiliate fees would make it easier for consumers to compare offers between two or more creditors;
- Whether to require that a consumer may not pay upfront points and fees unless the consumer qualifies for the zero-zero alternative; and
- Whether to require information about the zero-zero alternative to be provided not just in connection with customized quotes given prior to application, but also in advertising and at the time that consumers are provided disclosures within three days after application.

Comments Received on the Proposal

Consumer group commenters. There was no consensus among consumer groups on whether, and how, the Bureau should use its exemption authority regarding the statutory ban on consumers paying upfront points and fees. Four consumer groups argued that the Bureau should allow the statutory ban to go into effect. These consumer groups asserted that paying points is generally a bad idea for most consumers given the time it takes to recoup the cost, the difficulty of predicting whether the consumer will refinance or sell before that time comes, the mathematical difficulty of calculating when that time is, and the difficulty of comparing a variety of different offers. These consumer groups indicated that in transactions where the creditor compensates the loan originator, creditors typically increase the interest rate to some extent to recoup at least in part the compensation paid to the loan originators. These consumer groups indicated that consumers pay fees in the expectation of decreasing the interest rate. The consumer groups asserted that when both upfront fees and interest rates that are increased to pay loan originator compensation are present in the transaction, the consumer's payment of cash, paid to buy down the interest rate, is wasted because the creditor has brought the interest rate up. These consumer groups also asserted that this ''see-saw'' of incentive payments obscures the cost of credit to consumers and results in higher costs for consumers.

These consumer groups also opposed the Bureau's proposal on the zero-zero alternative based on concerns that the Bureau's proposal would be a very difficult rule to enforce and very easy to manipulate. These consumer groups indicated that additional rules to address these risks will only add greater complexity to the rules. These consumer groups stated that if the Bureau decides to use its exemption authority, creditors should only be allowed to offer or disclose a loan with upfront points and fees upon a consumer's written request.

Other consumer groups, however, advocated different approaches. One consumer group supported the Bureau's use of its exemption authority because this group believed that use of origination fees to cover origination costs and discount points to reduce the interest rate for a loan can provide value to the borrower in certain circumstances and that other protections regarding points and fees in the Dodd-Frank Act will decrease the risks to consumers from paying upfront points and fees. Specifically, this commenter pointed out additional protections on points and fees contained in the Dodd-Frank Act, such as limits on points and fees for qualified mortgages as implemented by the 2013 ATR Final Rule, and new disclosures to be issued by the Bureau when the 2012 TILA–RESPA Proposal is finalized that will provide a clearer description of points and fees paid on loans. Nonetheless, this consumer group did not support the Bureau's proposal regarding the zero-zero alternative. This consumer group believed that requiring creditors to offer a product with no upfront origination fees or discount points would not provide significant protections to borrowers, would likely be confusing to consumers, and could also harm creditors. For example, this commenter stated that while the zero-zero alternative offered by a particular creditor may be less complicated than other options that creditors offer, it may not be the best deal for the consumer. Because the zero-zero alternative would be a required disclosure, creditors may be discouraged from making the case to the consumer that a zero-zero alternative is less advantageous, even when it really is. This consumer group suggested that in lieu of the zero-zero alternative, creditors should be required to disclose all points and fees charged when they give a quote to a borrower.

Other consumer groups generally supported the Bureau's use of its exemption authority and supported the proposal regarding the zero-zero alternative with some revisions. Suggestions for revisions included requiring information about zero-zero alternatives to be provided at the time that consumers are provided disclosures within three days after application.

Industry commenters. All of the industry commenters stated that the Bureau should use its exemption authority so that the statutory ban on upfront points and fees does not go into effect. Most industry commenters raised concerns about access to credit if the statutory ban on upfront points and fees went into effect, or if a creditor was restricted in making a loan with upfront points and fees unless the creditor also makes available the zero-zero alternative. Several industry commenters indicated that some consumers will not qualify for the loans without upfront points and fees because of debt-to-income requirements. If the statutory ban were allowed to go into effect, these consumers would not have the opportunity to pay upfront points and fees to lower the interest rate so that they could qualify for the loan.

Some industry commenters also indicated that loans without upfront points and fees are not always feasible for all consumers and all types of loans. In some cases, creditors cannot recover foregone origination fees by increasing the interest rate on the loan because the incremental premium paid by the secondary market for loans with higher interest rates may be insufficient, especially for smaller loans or higher-risk borrowers. In addition, one GSE indicated that an increase in loans without upfront points and fees could have an impact on prepayment speed which could reduce the value of mortgage securities and thereby drive up mortgage prices (interest rates). Some industry commenters also noted that some mortgage programs, particularly those designed for lower income people, do not allow the creditor to vary origination fees, or may cap the interest rate on the loan such as it would be difficult for the creditor to recoup the entire origination costs through a higher interest rate. Many industry commenters also raised concerns that the loans without points and fees and higher interest rates might trigger APR thresholds for high-cost loans under § 1026.32 and/or similar state laws, and state that creditors typically are not willing to make these types of high-cost loans.

In addition, some industry commenters also raised concerns about managing prepayment risk for portfolio lending if they were limited in their ability to impose upfront points and fees (especially because they will be limited in imposing prepayment penalties under the 2013 ATR Final Rule and the 2013 HOEPA Final Rule). One industry trade group noted that financial institution prudential regulators have previously warned institutions about offering zero-zero loans, as they tend to have significantly higher prepayment speeds.

One industry trade group commenter also stated that if the statutory ban on upfront points and fees were to go into effect, it would require creditors in the vast majority of transactions in today's market to restructure their current pricing practices or compensation. This trade group indicated that some community bankers have informed it that those community banks will discontinue their mortgage lines. The trade group indicated that the short-term effects would be very damaging, as mortgage sources would shrink, and rates would rise since originators that cannot receive upfront points or fees from the consumer would be forced to recoup their origination costs through higher rates. Several credit union commenters also were concerned about the cost of complying with the proposal requiring a zero-zero alternative and a bona fide trade-off, indicating that implementation, training and system changes would be expensive and resource intensive. These credit union commenters indicated that some smaller institutions like credit unions and community banks may deem the cost too high and exit the mortgage business, leaving the largest mortgage loan operators with more market share and consumers with fewer choices.

Nearly all of the industry commenters also stated that the zero-zero alternative as proposed was unworkable or undesirable. Industry commenters raised a number of compliance and operational issues, such as the difficulty in determining pre-application whether a consumer is likely to qualify for the zero-zero alternative.

Some industry commenters also questioned whether the zero-zero alternative, as proposed, would be beneficial to consumers. Several commenters raised concerns that consumers when they are given information about the zero-zero alternative might be confused about why they are receiving such information and might believe that the zero-zero loan was always the best option for them even when it is not. Some commenters expressed concern that consumers may be confused by receiving information about a zero-zero alternative that they did not request. Some commenters also indicated that including information about the zero-zero alternative in advertisements might not in fact enable consumers properly to determine the lowest cost loan, especially if affiliates' fees were treated as upfront points and fees, but non-affiliates, third-party fees were not. Some of these commenters also urged the Bureau to conduct consumer testing on the zero-zero alternative, similar to what it has done to prepare to integrate the existing mortgage loan disclosures under TILA and RESPA.

Many industry commenters suggested that the Bureau should provide a complete exemption. These commenters generally believed that the Bureau should continue to study the impact of regulating points and fees instead of finalizing an approach in January 2013. Some of these commenters stated that the Bureau should study the impacts of the other Title XIV rulemakings on the mortgage market before adopting any new regulation on upfront points and fees, while other commenters stated that the Bureau should address the issue as part of finalizing the 2012 TILA–RESPA Proposal. Other industry commenters did not advocate for a complete exemption, but instead advocated for various different approaches than the zero-zero alternative as proposed. Suggested alternatives included requiring creditors to provide a generic disclosure stating that additional options for rates, fees, and payments are available, to make the zero-zero alternative available only upon request of the consumer, or to disclose the loan with the fewest points and fees for which the consumer is likely to qualify. Finally, other industry commenters stated that the zero-zero alternative approach was unworkable but did not suggest alternative approaches.

State bank supervisor commenters. A group submitting comments on behalf of State bank supervisors supported the zero-zero alternative without suggesting any revisions.

The Final Rule

Use of the Bureau's exemption authority. As discussed in more detail below, the Bureau adopts in this final rule a complete exemption to the statutory ban on upfront points and fees set forth in TILA section 129B(c)(2)(B)(ii). Specifically, this final rule revises proposed § 1026.36(d)(2)(ii) to provide that a payment to a loan originator that is otherwise prohibited by section 129B(c)(2)(A) of the Truth in Lending Act is nevertheless permitted pursuant to section 129B(c)(2)(B) of the Act, regardless of whether the consumer makes any upfront payment of discount points, origination points, or fees, as described in section 129B(c)(2)(B)(ii) of the Act, as long as the loan originator does not receive any compensation directly from the consumer as described in section 129B(c)(2)(B)(i) of the Act.

The Bureau is including § 1026.36(d)(2)(ii) in the final rule under its authority in TILA section 129B(c)(2)(B), as amended by section 1100A of the Dodd-Frank Act, to waive or create exemptions from this prohibition on consumers paying upfront discount points, origination points or origination fees where the Bureau determines that doing so is in the interest of consumers and in the public interest.[152] The Bureau has determined that it is in the interest of consumers and in the public interest to exercise its exemption authority in this way, to avoid the detrimental effect of the statutory ban on consumers paying upfront points and fees. The Bureau's exercise of the exemption authority will preserve access to credit and consumer choice. The complete exemption also will allow the Bureau to continue to conduct consumer testing and market research to improve its ability to regulate upfront points and fees in a way that maximizes consumer protection while preserving access to credit and empowering consumer choice. The Bureau is concerned that the alternative it proposed might not serve consumers or the public. Accordingly, the proposed exemption from the statutory prohibition as described above, and contained in proposed § 1026.36(d)(2)(ii), is not adopted.

As explained above, eliminating upfront points and fees would result in an increase in interest rates and thus in monthly payments. The Bureau is concerned that, at the margins, some consumers would not qualify for the loans at the higher interest rate because of debt-to-income ratio underwriting requirements. If the statutory ban were allowed to go into effect, these consumers would not have the opportunity to pay upfront points and fees to lower the interest rate so that they could qualify for the loan.

In addition, the Bureau is concerned that it may not always be feasible for a creditor to offer loans without upfront points and fees to all consumers and various types of loan products. In some cases, increasing the interest rate on a loan will not generate sufficient incremental premium to allow creditors to cover their costs, especially for smaller loans or higher-risk borrowers. For example, one commenter indicated that historical data shows that premiums paid by the secondary market for 30-year fixed-rate mortgages have, at times, made it difficult for creditors to recover foregone upfront charges by increasing the interest rate. The commenter noted, for example, that prior to 2009, when the Board was not generally a purchaser of mortgage-backed securities, creditors had difficulty offering zero-zero alternatives for 30-year fixed-rate mortgages. While it is possible that if the statutory ban were to go into effect the secondary market might adjust so as to enable creditors to recoup origination costs by interest rate increases that generate sufficient increases in the premium paid by the secondary market, the Bureau remains concerned that this may not happen for all segments of the market, and as a result access to credit for some consumers may be impaired.

The Bureau also is concerned that creditors may curtail certain types of portfolio lending if the statutory ban were to go into effect. Community banks and some credit unions, in particular, tend to make loans to their customers or members, which cannot be sold into the secondary market because of, for example, unique features of the property or the consumer's finances. These creditors may not be able to afford to wait to recoup their origination costs over the life of the loan and, even if they can, they may have difficulty managing prepayment risk, especially because creditors will be limited in imposing prepayment penalties under the Dodd-Frank Act, the 2013 ATR Final Rule and the 2013 HOEPA Final Rule. For example, one credit union indicated that it currently makes many short-term (10- to 12-year) fixed-rate loans held in portfolio where it charges a relatively small ($250–$500) flat origination fee to offset its direct costs. The credit union does not offer a zero-zero alternative in

[152] The Bureau's inclusion of § 1026.36(d)(2)(ii) of the final rule is also an exercise of its exemption authority under TILA section 105(a). This exemption will effectuate the purpose stated in TILA section 129B of ensuring that responsible, affordable mortgage credit remains available to consumers by preserving access to credit and consumer choice in credit as explained in this supplementary information.

these instances because it does not sell the loan into the secondary market or generate any upfront revenue. The credit union indicated that it would reconsider originating this type of loan if it was not allowed to charge upfront fees on these loans.

The Bureau also notes that some Federal and State mortgage programs, particularly those designed for lower-income people, do not allow the creditor to vary origination fees, or may cap the interest rate on the loan such that it would be difficult for the creditor to recoup the entire origination costs through a higher interest rate. While it may be possible in some cases for these Federal and State mortgage programs to be restructured to accommodate zero-zero alternatives, the Bureau remains concerned that it might not always be feasible to do so, which could impair access to credit for lower income consumers that these programs are designed to help.

In sum, the Bureau believes that allowing the statutory ban in TILA section 129B(c)(2)(B)(ii) to go into effect has the potential to curtail access to credit for consumers, which would be particularly detrimental to consumers given the current fragile state of the mortgage market. Given the current tight underwriting standards and limited supply of credit, driving up interest rates and thus monthly payments, and constricting the number of creditors in the market, could be particularly damaging to consumers who are already having difficulty qualifying for credit.

The Bureau also believes that allowing the statutory ban on upfront points and fees in TILA section 129B(c)(2)(B)(ii) to go into effect would significantly limit consumer choice for financial products to the detriment of consumers. Some mortgage consumers may want the lowest rate possible on their loans. For example, given today's low interest rate environment, a consumer who has purchased a house in which the consumer plans to live for many years may be best served by paying upfront origination charges in order to get the full benefit of the current low interest rates or even paying discount points to buy down that rate. In addition, some mortgage consumers may prefer to lower the future monthly payment on the loan below some threshold amount, and paying discount points, origination points or origination fees would allow consumers to achieve this lower monthly payment by reducing the interest rate.[153] This is possible today as creditors typically offer a variety of pricing options on mortgages, such as the ability of a consumer to pay less in upfront points and fees in exchange for a higher interest rate or to pay more in upfront points and fees in exchange for a lower interest rate. Creditors also may offer loans without upfront points and fees to some, but not all, consumers.

Finally, the Bureau believes that preserving the ability of consumers to pay upfront points and fees enhances the efficiency of the mortgage market. Investors in mortgage securities face the risk that in declining interest rate environments consumers will prepay their mortgages. Investors factor in this prepayment risk in determining how much they will pay for a mortgage backed security. Consumers who pay discount points and secure a lower rate "signal" to investors their reduced likelihood to prepay. This signaling, in turn, facilitates a more efficient market in which creditors are able to provide such consumers with a better deal.

The Bureau has carefully considered the countervailing considerations noted by some, although by no means all, consumer groups. The Bureau recognizes that some consumers—particularly less sophisticated consumers—may be harmed because they do not fully understand the complexity of the financial trade-offs when they pay upfront points and fees and thus do not get fair value for them. Additionally, other consumers may misperceive their likelihood of prepaying their mortgage (either as the result of a refinance or a home sale) and, as a result, may make decisions that prove not to be in their long-term economic self-interest. The Bureau also recognizes that there is some evidence that consumers pay lower, all-in costs when they do not pay any upfront costs although the Bureau notes that the leading study of this phenomenon was based on a period of time when the compensation paid to originators could vary with the terms of the transaction.

Nevertheless, the Bureau also believes, for the reasons discussed above, that, most consumers generally benefit from having a mix of pricing options available, so that consumers can select financial products that best fit their needs. Allowing the statutory ban to go into effect would prohibit the payment of points and fees irrespective of the circumstances of their payment, which the Bureau believes would significantly restrict consumers' choices in mortgage products and, in aggregate, acts to the detriment of consumers and the public interest. While the Bureau believes that additional study may show that additional restrictions on upfront points and fees are needed beyond the restrictions that are contained in the Title XIV Rulemakings, the Bureau believes that it would be imprudent at this time to restrict consumers' choices of mortgage products to only one type—those without upfront points and fees—especially because this limitation may impair consumers' access to credit, as discussed above. Thus, the Bureau has determined that it is in the interest of consumers and the public interest to provide a complete exemption at this time, to avoid the detrimental effects of the statutory ban on consumers.

As part of the Bureau's ongoing monitoring of the mortgage market and for the purposes of the Dodd-Frank Act section 1022(d) five-year review, the Bureau will assess how the complete exemption of the prohibition on points and fees is affecting consumers, and the impact of the other Title XIV Rulemakings and the final rule to be adopted under the 2102 TILA–RESPA Proposal on consumers' understanding of points and fees. If the Bureau were to determine over this time that eliminating or narrowing the exemption is in the interest of consumers and in the public interest, the Bureau would issue a new proposal for public notice and comment. The Bureau notes, however, that although it is providing a complete exemption to the statutory ban on upfront points and fees in TILA section 129B(c)(2)(B)(ii) at this time, the Bureau will continue to ensure that creditors are complying with all existing restrictions on upfront points and fees. In the event that problems develop in the marketplace, the Bureau may use its enforcement authority, such as authority to prevent unfair, deceptive, or abusive acts or practices (UDAAP) under section 1031 of the Dodd-Frank Act, as well as considering further action under section 1031 or other authority.

Zero-zero alternative. The Bureau also does not believe it is prudent at this time to adopt the proposal regarding the zero-zero alternative. As discussed above, the Bureau proposed to structure the use of its exemption authority to enable consumers to receive the benefits

[153] Consumers can also reduce monthly payments by making a bigger down payment, in order to reduce the loan amount. Nonetheless, it may take a significant increase in the down payment to achieve the desired reduction in the monthly payment. In other words, if the consumer applied the same funds that he or she would otherwise pay in discount points, origination points, or origination fees and applied it to a larger down payment to reduce the loan amount, the consumer may not gain as large a reduction in the monthly payment as if the consumer used that money to pay discount points, origination points or origination fees to reduce the interest rate. Some consumers may also obtain a tax benefit by paying discount points that applying such funds to a down payment would not achieve.

of obtaining loans that do not include discount points, origination points or origination fees, but also to preserve consumers' ability to choose a loan with such points and fees. Based on comments received on the zero-zero alternative and its own further analysis, the Bureau has concerns whether the zero-zero alternative as proposed would accomplish what the Bureau believes to be the objectives of the statute, which is to facilitate consumer shopping and enhance consumer decision-making.

The Bureau is concerned that some consumers might find the zero-zero alternative confusing, and it believes that testing would be needed to determine whether a variant of the zero-zero alternative can be fashioned to provide information and protections to consumers that outweigh possible disadvantages. Several commenters raised concerns that when consumers are given information about the zero-zero alternative, they might be confused about why they are receiving such information and might believe that a zero-zero alternative was always the best option for them even when it is not. For example, one consumer group commenter stated that while the zero-zero alternative offered by a particular creditor may be less complicated than other options that creditor offers, it may not be the best deal for the consumer.

The Bureau also solicited comment on adopting rules that would require creditors to advertise the zero-zero alternative when advertising loans with upfront points and fees. Through the proposal, the Bureau had intended to facilitate consumer shopping by enhancing the ability of consumers to make comparisons using loans that do not include discount point, origination points or origination fees made available by different creditors as a basis for comparison. As discussed above, for transactions that do not involve a loan originator organization, under the proposal a creditor would be deemed to be making the zero-zero alternative available if, in providing a consumer with an interest rate quote specific to the consumer for a loan which included points or fees, the creditor also provided a quote for a comparable, alternative loan that did not include points and fees (unless the consumer is unlikely to qualify for the loan). In putting this proposal forward, the Bureau recognized that by the time a consumer receives a quote from a particular creditor for an interest rate specific to that consumer the consumer may have already completed his or her shopping in comparing rates from different creditors. Thus, the Bureau suggested, without a specific proposal, that revising the advertising rules in § 1026.24(d) might be a critical building block to enable consumers to make comparisons using loans that does not include discount points, origination points or origination fees made available by different creditors as a basis for comparison.

Some industry commenters argued that requiring information about the zero-zero alternative in advertisements would present the serious risk of providing too much information for consumers to digest and may only confuse consumers. Some industry commenters also indicated that including information about the zero-zero alternative in advertisements might not in fact enable consumers properly to determine the lowest cost loan, especially if affiliates' fees were treated as upfront points and fees, but non-affiliate, third-party fees were not. To address this further issue and facilitate shopping on zero-zero alternatives made available by multiple creditors, the proposal also had solicited comment on which fees to include in the definition of upfront points and fees, including whether to include fees irrespective of affiliate status or fees based on the type of service provided. Comments on the proposal, however, did not point to a clear way to resolve these interlinked issues. Moreover, the Bureau has not conducted consumer testing on how advertising rules could be structured and the definition of points and fees adjusted to facilitate shopping and reduce consumer confusion or whether requiring a zero-zero price quote without modifying the advertising rules would facilitate consumer shopping.

Finally, based on comments received, the Bureau has concerns whether a zero-zero alternative can be crafted that is not easily evaded by creditors. In developing its proposal, the Bureau recognized that because a loan with no upfront points and fees will carry a higher interest rate, not every consumer can qualify for both a loan with upfront costs and a loan with none. Under the Bureau's proposal, therefore, the creditor was not required to make available the zero-zero alternative to consumers that were unlikely to qualify for it. In including this provision, the Bureau was concerned that creditors that do not wish to make available loans without upfront points and fees to certain consumers could possibly manipulate their underwriting standards so that those consumers would not qualify for such loans or could set the interest rates on their purported alternatives without upfront points and fees high enough for certain consumers that those consumers could not satisfy the creditor's underwriting standards. Thus, the Bureau solicited comment on another alternative, whereby a creditor would be permitted to make available a loan that includes discount points, origination points or origination fees only when the consumer also qualifies for the zero-zero alternative. The Bureau was concerned, however, that adoption of such an alternative could impair access to credit to the extent there were consumers who could only qualify for a loan with upfront points or fees. The Bureau solicited comment on this issue.

Industry commenters indicated that the alternative approach would limit access to credit to some consumers, similar to the types of risks to consumers' access to credit that would result if the statutory provision was implemented unaltered, as discussed above. In addition, several consumer group commenters argued that the ''unlikely to qualify'' standard would be difficult to enforce and very easy to manipulate. These commenters expressed concern that creditors may be dishonest about how they decide who is unlikely to qualify for the zero-zero alternative, may manipulate underwriting standards, or may set interest rates high for certain consumers to avoid being required to offer the zero-zero alternative, which they additionally argued could pose risks for violations of fair lending laws. The Bureau is concerned that the zero-zero alternative as proposed may not provide the intended benefits if the requirement can be easily evaded by creditors.

The Bureau has gained substantial knowledge from these discussions about the zero-zero alternative and believes that there is some potential in the future to adopt some variant of the zero-zero alternative that sufficiently mitigates the concerns discussed above and that strikes the appropriate balance between these competing considerations. The Bureau believes, however, that finalizing now any particular variant of the zero-zero alternative absent further study on a variety of unsettled issues and further notice and comment on a refined proposal would risk harm to consumer interests and the public interest in a period of market fragility and concurrent fundamental changes in the regulatory framework.

There remain unresolved many crucial issues relating to the design, operation, and likely effects of adopting the zero-zero alternative, including whether disclosing the zero-zero alternative to consumers either pre- or post-application or both is in fact beneficial to consumers in shopping for a mortgage and consumer understanding of trade-offs; how best to structure advertising rules, post-application disclosures, and the bona fide requirement if they are determined to be valuable to consumers; and the assessment of the effects on consumer and market behaviors of the other Title XIV Rulemakings and the final rule to be adopted under the 2102 TILA–RESPA Proposal. The Bureau, while mindful of its goal to help consumers make better informed decisions, is not currently able to judge whether and how to structure the zero-zero alternative or whether a different approach to the regulation of upfront points or fees would be more effective to advance Congress's purposes in enacting the points and fees provision.

Additional study needed. The Bureau considers the issues presented in this rulemaking related to the payment of points and fees to be a crucial unresolved piece of its Title XIV Rulemaking efforts to reform the mortgage market after the consumer abuses that contributed to the mortgage crisis and its negative impact on the U.S. economy. The Bureau is committed to determining what additional steps, if any, are warranted to advance the interests of consumers and the public. The mortgage market has undergone significant shifts in the past few years, and the Bureau believes it will continue to do so as the Title XIV protections are implemented and the new disclosure-regime in the 2012 TILA–RESPA Proposal is finalized and implemented.

For example, the Board's 2010 Loan Originator Final Rule reshaped how loan originators may be compensated, and this rulemaking, while continuing the basic approach of that earlier rulemaking, makes significant adjustments to remove loan originators' incentives to steer consumers to particular loans to their detriment. In addition, as noted above, the 2013 ATR Final Rule imposes limits on the points and fees for a qualified mortgage, the 2013 HOEPA Final Rule lowers the points and fees threshold for high-cost loans, and both rules include loan originator compensation in the calculation of points and fees. Moreover, the Bureau also is in the process of finalizing its 2012 TILA–RESPA Proposal to revise loan disclosures for closed-end mortgages, including the Loan Estimate, which would be given within three days after application and is designed to enhance consumers' understanding of points and fees charged on the loan and to facilitate consumer shopping. The Bureau also is in the process of receiving comments on its 2013 ATR Concurrent Proposal which will address the issue of how loan originator compensation should be factored in to the calculation of points and fees which determines whether a loan can be a qualified mortgage or whether a loan is covered by HOEPA.

Without experience under the new regulatory regime and without consumer testing and market research, the Bureau is uncertain whether finalizing a version of the zero-zero alternative or some other alternative would benefit consumers. Once the new rules take effect, the Bureau intends to direct its testing and research to identify the impact of the rules on the prevalence and size of upfront points and fees, consumers' understanding of those charges and the alternatives to them, and the choices consumers make, including whether consumers understand and make informed choices based on the trade-off between the payment of upfront points and fees and the interest rate. Based on the results of that research and analysis, the Bureau will consider whether some additional actions, such as proposing a different version of the zero-zero alternative, are appropriate to enhance consumer decision making and consumer choice and, if so, how to best effectuate those goals.

The Bureau is required by section 1022(d) of the Dodd-Frank Act to conduct an assessment of the effectiveness of each significant rule the Board issues and to publish a report of that assessment within five years of the effective date of each such rule. To prepare for such an assessment, the Bureau intends to conduct baseline research to understand consumers' current understanding and decision making with respect to the tradeoffs between upfront charges and interest rates. The Bureau will undertake further research once this rule, and the related rules discussed above, take effect. Through this research, the Bureau will assess how the complete exemption of the prohibition on points and fees is affecting consumers and how best to further consumer protection in this area.

36(e) Prohibition on Steering

36(e)(3) Loan Options Presented

Existing § 1026.36(e)(1) provides that a loan originator may not direct or ''steer'' a consumer to consummate a transaction based on the fact that the originator will receive greater compensation from the creditor in that transaction than in other transactions the originator offered or could have offered to the consumer, unless the consummated transaction is in the consumer's interest. Section 1026.36(e)(2) provides a safe harbor that loan originators may use to comply with the prohibition set forth in § 1026.36(e)(1). Specifically, § 1026.36(e)(2) provides that a transaction does not violate § 1026.36(e)(1) if the consumer is presented with loan options that meet certain conditions set forth in § 1026.36(e)(3) for each type of transaction in which the consumer expressed an interest. The term ''type of transaction'' refers to whether: (1) A loan has an annual percentage rate that cannot increase after consummation; (2) a loan has an annual percentage rate that may increase after consummation; or (3) a loan is a reverse mortgage.

As set forth in § 1026.36(e)(3), to qualify for the safe harbor in § 1026.36(e)(2), a loan originator must obtain loan options from a significant number of the creditors with which the originator regularly does business and must present the consumer with the following loan options for each type of transaction in which the consumer expressed an interest: (1) The loan with the lowest interest rate; (2) the loan with the lowest total dollar amount for origination points or fees and discount points; and (3) the loan with the lowest interest rate without negative amortization, a prepayment penalty, a balloon payment in the first seven years of the loan term, shared equity, or shared appreciation, or, in the case of a reverse mortgage, a loan without a prepayment penalty, shared equity, or shared appreciation. Under § 1026.36(e)(3)(ii), the loan originator must have a good faith belief that the options presented to the consumer as discussed above are loans for which the consumer likely qualifies.

Discount Points, Origination Points and Origination Fees

As discussed above, to qualify for the safe harbor in § 1026.36(e)(2), a loan originator must present to a consumer particular loan options, one of which is the loan with the lowest total dollar amount for ''origination points or fees and discount points'' for which the loan originator has a good faith belief that the consumer likely qualifies. *See* § 1026.36(e)(3)(i)(C) and (e)(3)(ii). For consistency, the Bureau proposed to revise § 1026.36(e)(3)(i)(C) to use the terminology ''discount points and origination points or fees,'' a defined term in proposed § 1026.36(d)(2)(ii)(B).

In addition, the Bureau proposed to amend § 1026.36(e)(3)(i)(C) to address the situation where two or more loans have the same total dollar amount of discount points, origination points or origination fees. This situation would have been more likely to occur in transactions subject to proposed § 1026.36(d)(2)(ii). As discussed above, proposed § 1026.36(d)(2)(ii)(A) would have required, as a prerequisite to a creditor, loan originator organization, or affiliate of either imposing any discount points, origination points or origination fees on a consumer in a transaction, that the creditor also make available to the consumer a comparable, alternative loan that does not include discount points, origination points or origination fees, unless the consumer is unlikely to qualify for such a loan. Under the proposal, for transactions that involve a loan originator organization, a creditor would make available to the consumer a comparable, alternative loan that does not include discount points, origination points or origination fees if the creditor communicates to the loan originator organization the pricing for all loans that do not include discount points, origination points or origination fees, unless the consumer is unlikely to qualify for such a loan. Thus, under the proposal, each creditor with whom a loan originator organization regularly does business generally would have been communicating pricing to the loan originator organization for all loans that do not include discount points, origination points or origination fees.

Proposed § 1026.36(e)(3)(i)(C), read in conjunction with § 1026.36(e)(3)(ii), provided that, with respect to the loan with the lowest total dollar amount of discount points and origination points or fees, if two or more loans have the same total dollar amount of discount points, origination points or origination fees, the loan originator must present the loan from among those alternatives that has the lowest interest rate for which the loan originator has a good faith belief that the consumer likely qualifies.

The Bureau did not receive any comments on this aspect of the proposal. This final rule adopts proposed § 1026.36(e)(3)(i)(C) with one revision. As discussed above, this final rule does not adopt the proposed requirement that, as a prerequisite to a creditor, loan originator organization, or affiliate of either imposing any discount points, origination points or origination fees on a consumer in a transaction, that the creditor also make available to the consumer a comparable, alternative loan that does not include discount points, origination points or origination fees, unless the consumer is unlikely to qualify for such a loan. In addition, this final rule does not adopt the definition of ''discount points and origination points or fees'' as proposed in § 1026.36(d)(2)(ii)(B). Accordingly, § 1026.36(e)(3)(i)(C), as adopted in this final rule, does not use the term ''discount points and origination points or fees'' as proposed in § 1026.36(e)(3)(i)(C). As adopted, § 1026.36(e)(3)(i)(C) is revised to use the phrase ''discount points, origination points or origination fees'' to make more clear which points and fees are included for purposes of this provision. Even though the provision in § 1026.36(d)(2)(ii) regarding the comparable, alternative loan is not adopted in this final rule, the Bureau believes that the additional clarification added to § 1026.36(e)(3)(i)(C) is still useful. The Bureau believes that there still may be cases where two or more loans available to be presented to a consumer by a loan originator for purposes of the safe harbor in § 1026.36(e)(2) have the same total dollar amount of discount points, origination points or origination fees. In these cases, § 1026.36(e)(i)(3)(C) as adopted in this final rule, and read in conjunction with § 1026.36(e)(ii), would provide that the loan originator must present the loan with the lowest interest rate that has the lowest total dollar amount of discount points, origination points or origination fees for which the loan originator has a good faith belief that the consumer likely qualifies.

The Loan With the Lowest Interest Rate

As discussed above, to qualify for the safe harbor in § 1026.36(e)(2), a loan originator must present to a consumer particular loan options, one of which is the loan with the lowest interest rate for which the loan originator has a good faith belief that the consumer likely qualifies. *See* § 1026.36(e)(3)(i)(A) and (e)(3)(ii). Mortgage creditors and other industry representatives have asked for additional guidance on how to identify the loan with the lowest interest rate, as set forth in § 1026.36(e)(3)(i)(A), given that a consumer generally can obtain a lower rate by paying discount points. To provide additional clarification, the Bureau proposed to amend comment 36(e)(3)–3 to clarify that the loan with the lowest interest rate for which the consumer likely qualifies is the loan with the lowest rate the consumer can likely obtain, regardless of how many discount points the consumer must pay to obtain it.

The Bureau did not receive any comments on this aspect of the proposal. The final rule adopts comment 36(e)(3)–3 as proposed in substance, with several revisions to clarify the intent of the comment. Comment 36(e)(3)–3 is revised to clarify that the loan with the lowest interest rate for which the consumer likely qualifies is the loan with the lowest rate the consumer can likely obtain, regardless of how many discount points, origination points or origination fees the consumer must pay to obtain it. As adopted in this final rule, comment 36(e)(3)–3 uses the phrase ''discount points, origination points or origination fees,'' consistent with § 1026.36(e)(3)(i)(C), as discussed above. In addition, the first sentence of the comment is revised to reference the requirement in § 1026.36(e)(3)(ii) that the loan originator must have a good faith belief that the options presented to the consumer under § 1026.36(e)(3)(i) are loans for which the consumer likely qualifies.

36(f) Loan Originator Qualification Requirements

Section 1402(a)(2) of the Dodd-Frank Act added TILA section 129B(a) and (b)(1), which imposes new requirements for mortgage originators, including requirements for them to be licensed, registered, and qualified, and to include their identification numbers on loan documents. 15 U.S.C. 1639b. It also added TILA section 129B(b)(2), which, as amended by section 1100A of the Dodd-Frank Act, requires the Bureau to prescribe regulations requiring depository institutions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such depository institutions, the subsidiaries of such institutions, and the employees of such institutions or subsidiaries with the requirements of TILA section 129B and the registration procedures established under section 1507 of the SAFE Act, 12 U.S.C. 5101, *et seq.*

TILA section 129B(b)(1)(A) authorizes the Bureau to issue regulations requiring mortgage originators to be registered and licensed in compliance with State and Federal law, including the SAFE Act. TILA section 129B(b)(1)(A) also authorizes the Bureau's regulations to require mortgage originators to be ''qualified.'' As discussed in the section-by-section analysis of § 1026.36(a)(1) above, for purposes of TILA section 129B(b) the term ''mortgage originator'' includes natural persons and organizations. Moreover, for purposes of TILA section 129B(b), the term includes creditors, notwithstanding that the definition of mortgage originator in TILA section 103(cc)(2) excludes creditors for certain other purposes.

The SAFE Act imposes licensing and registration requirements on individuals. Under the SAFE Act, loan originators who are employees of a depository institution or a Federally regulated subsidiary of a depository institution are subject to registration, and other loan originators are generally required to obtain a State license and also comply with registration. Regulation H, 12 CFR part 1008, which implements SAFE Act standards applicable to State licensing, provides that a State is not required to impose licensing and registration requirements on loan originators who are employees of a bona fide nonprofit organization. 12 CFR 1008.103(e)(7). The SAFE Act requires individuals who are subject to SAFE Act registration or State licensing to obtain a unique identification number from the NMLSR, which is a system and database for registering, licensing, and tracking loan originators.

SAFE Act licensing is implemented by States. To grant an individual a SAFE Act-compliant loan originator license, section 1505 of the SAFE Act, 12 U.S.C. 5104, requires the State to determine that the individual has never had a loan originator license revoked; has not been convicted of enumerated felonies within specified timeframes; has demonstrated financial responsibility, character, and fitness; has completed 20 hours of pre-licensing classes that have been approved by the NMLSR; has passed a written test approved by the NMLSR; and has met net worth or surety bond requirements. Licensed loan originators must take eight hours of continuing education classes approved by the NMLSR and must renew their licenses annually. Some States impose additional or higher minimum standards for licensing of individual loan originators under their SAFE Act-compliant licensing regimes. Separately from their SAFE Act-compliant licensing regimes, most States also require licensing or registration of loan originator organizations.

Section 1507 of the SAFE Act, 12 U.S.C. 5106, generally requires individual loan originators who are employees of depository institutions to register with the NMLSR by submitting identifying information and information about their employment history and certain criminal convictions, civil judicial actions and findings, and adverse regulatory actions. The employee must also submit fingerprints to the NMLSR and authorize the NMLSR and the employing depository institution to obtain a criminal background check and information related to certain findings and sanctions against the employee by a court or government agency. Regulation G, 12 CFR part 1007, which implements SAFE Act registration requirements, imposes an obligation on the employing depository institution to have and follow policies to ensure compliance with the SAFE Act. The policies must also provide for the depository institution to review employee criminal background reports and to take appropriate action consistent with Federal law, including the criminal background standards for depository employees in section 19 of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. 1829, section 206 of the Federal Credit Union Act, 12 U.S.C. 1786(i), and section 5.65(d) of the Farm Credit Act of 1971, as amended, 12 U.S.C. 2277a–14(a). 12 CFR 1007.104(h).

Proposed § 1026.36(f) would have implemented, as applicable, TILA section 129B(b)(1)(A)'s mortgage originator licensing, registration, and qualification requirements by requiring a loan originator for a consumer credit transaction to meet the requirements described above. Proposed § 1026.36(f) tracked the TILA requirement that mortgage originators comply with State and Federal licensing and registration requirements, including those of the SAFE Act, where applicable. Proposed comment 36(f)–1 noted that the definition of loan originator includes individuals and organizations and, for purposes of § 1026.36(f), includes creditors. Proposed comment 36(f)–2 clarified that § 1026.36(f) does not affect the scope of individuals and organizations that are subject to State and Federal licensing and registration requirements. The remainder of proposed § 1026.36(f) set forth standards that loan originator organizations would have to meet to comply with the TILA requirement that they and their employees be qualified, as discussed below.

Proposed § 1026.36(f) also would have provided that its requirements do not apply to government agencies and State housing finance agencies, employees of which are not required to be licensed or registered under the SAFE Act. The Bureau proposed this differentiation pursuant to TILA section 105(a) to effectuate the purposes of TILA, which, as provided in TILA section 129B(a)(2), include ensuring that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive. The Bureau stated in the proposal that it does not believe that it is necessary to apply the proposed qualification requirements to employees of government agencies and State housing finance agencies because the agencies directly regulate and control the manner of their employees' loan origination activities, thereby providing consumers adequate protection from these types of harm.

One nonprofit loan originator organization that has been designated a bona fide nonprofit organization by several States objected to the proposal's lack of an exemption for nonprofit loan originator organizations from the requirements of proposed § 1026.36(f). The commenter's objection was based on the concern that the effect of applying the proposed TILA qualification standards to it and other nonprofit loan originator organizations would be to alter and add to the standards that State regulators must apply in opting not to require an employee of a bona fide nonprofit loan originator organization to be licensed under the SAFE Act and Regulation H. In addition, the commenter expressed concern that the qualification standard would call into question the commenter's individual loan originators' exemption from State licensing requirements in States that have granted exemptions. The commenter noted that nonprofit loan originators and State regulators had worked together extensively to implement the processes for nonprofit organizations to apply for exemption under, and demonstrate compliance with, the Regulation H standards for bona fide nonprofits, as well as processes for State examination procedures to ensure that bona fide nonprofit organizations continue to meet the standards. The commenter was concerned that the proposal would require those processes to be developed all over again. The commenter suggested that, to reduce possible uncertainty, the Bureau should at least revise § 1026.36(f) to require that, to be qualified, a loan originator must be registered or licensed ''when required by,'' rather than ''in accordance with'' the SAFE Act.

An association of State bank regulators also urged that bona fide nonprofit organizations should be fully exempt from the qualification standards, just as government agencies and State housing finance agencies would be exempted under the proposal. The commenter recommended that an organization that has been determined to meet the Regulation H standards for bona fide nonprofit organizations has been determined to have a public or charitable purpose, to offer loan products that are favorable to borrowers, and to meet other standards, such that the nonprofit should not have to apply further standards to determine whether its individual loan originator employees meet the proposed qualification standards.

The Bureau does not believe that a complete exemption of bona fide nonprofit organizations from the TILA qualification standards is warranted, for the reasons discussed further below. However, in response to the concerns of the bona fide nonprofit organization, the Bureau emphasizes that the TILA qualification standards do not change existing law regarding which entities or individuals must be licensed under Federal or State law. Accordingly, for instance, the standards for States to determine whether a particular organization is a bona fide nonprofit and whether to require such a nonprofit's employees to be licensed under the SAFE Act and Regulation H are not affected by the final rule. As proposed comment 36(f)–2 stated § 1026.36(f) does not affect the scope of individuals and organizations that are subject to State and Federal licensing and registration requirements. To emphasize and explain further how this principle applies in the context of bona fide nonprofit organizations, the final rule removes the statement from comment 36(f)–2 and adds it to a new comment 36(f)–3. Comment 36(f)–3 goes on to explain that, if an individual is an employee of an organization that a State has determined to be a bona fide nonprofit organization and the State has not subjected the employee to that State's SAFE Act loan originator licensing, the State may continue not to subject the employee to that State's SAFE Act licensing even if the individual meets the definition of loan originator in § 1026.36(a)(1) and is therefore subject to the requirements of § 1026.36. It states that the qualification requirements imposed under § 1026.36(f) do not add to or affect the criteria that States must consider in determining whether an organization is a bona fide nonprofit organization under the SAFE Act.

The Bureau is also adopting, in part, the commenter's suggestion to revise the regulatory text to provide that a loan originator must be registered or licensed ''when required by'' State or Federal law, including the SAFE Act, to eliminate any further uncertainty. However, the final rule, like the proposal, specifies that, where State or Federal law requires the loan originator to be registered or licensed, the registration or licensing must be ''in accordance with'' those laws.

As discussed below, the TILA qualification standards primarily require the loan originator organization to screen its individual loan originators for compliance with criminal, financial responsibility, character, and general fitness standards and to provide periodic training to its individual loan originators commensurate with their loan origination activities. For these reasons, the Bureau disagrees with the comment of the association of State banking regulators that the TILA qualification standards are unnecessary for bona fide nonprofit organizations. The standards that a State must apply in determining whether an organization is a bona fide nonprofit organization all pertain to the mission and activities of the organization, but they do not address the background or knowledge of the organization's individual loan originators. The Bureau believes that the standards will be minimally burdensome for bona fide nonprofit organizations to implement and that consumers who obtain residential mortgage loans from them will benefit from increased screening and training of individual loan originators.

36(f)(1)

Proposed § 1026.36(f)(1) would have required loan originator organizations to comply with applicable State law requirements for legal existence and foreign qualification, meaning the requirements that govern the legal creation of the organization and the authority of the organization to transact business in a State. Proposed comment 36(f)(1)–1 stated, by way of example, that the provision encompassed requirements for incorporation or other type of formation and for maintaining an agent for service of process. The Bureau explained that the requirement would help ensure that consumers are able to seek remedies against loan originator organizations that fail to comply with requirements for legal formation and, when applicable, for operating as foreign businesses.

One commenter asked the Bureau to confirm that the provision does not imply that State law requirements for formation and legal existence apply to Federally chartered lending institutions. The Bureau is adopting § 1026.36(f)(1) and comment 36(f)(1)–1 as proposed. The final rule does not affect the extent to which Federally chartered lending institutions must comply with State law but rather, like the proposal, includes the qualifier ''applicable'' to acknowledge there are situations where certain State law requirements may not apply.

36(f)(2)

Proposed § 1026.36(f)(2) would have required loan originator organizations to ensure that their individual loan originators are in compliance with SAFE Act licensing and registration requirements. Proposed comment 36(f)(2)–1 noted that the loan originator organization can comply with the requirement by verifying information that is available on the NMLSR consumer access Web site.

One nondepository institution commenter objected to the proposed requirement that it ensure that its individual loan originators are licensed in compliance with the SAFE Act and applicable State licensing laws. The commenter noted that having to determine that its employee loan originators are properly licensed would be burdensome because licensing requirements vary by State.

The Bureau disagrees. First, the Bureau notes that employers are generally already responsible under State law for ensuring their employees comply with all State licensing requirements that apply to activities within the scope of their employment. The proposed provision imposes the same duty under TILA and simply renders it somewhat more universal. In any case, imposing this duty on loan originator organizations will benefit consumers by giving them recourse if an individual who has failed to obtain a loan originator license nonetheless acts as a loan originator for the benefit of the loan originator organization and causes harm to a consumer in originating the loan. The Bureau believes that it is not an unreasonable burden for a loan originator organization to ensure that the individual loan originators through which it conducts its business are not acting in violation of the law. As proposed, comment 36(f)(2)–1 stated that a loan originator organization can confirm the licensing or registration status of individual loan originators on the NMLSR consumer access Web site. The Bureau therefore is adopting § 1026.36(f)(2) as proposed, except that it is clarifying that a loan originator organization must ensure its individual loan originator are in compliance with SAFE Act licensing and registration requirements before the individuals act as a loan originator in a consumer credit transaction secured by a dwelling. It also clarifies that the individual loan originators whose licensing or registration status the loan originator organization must verify are those individual loan originators who work for the loan originator organization. Comment 36(f)(2)–1 clarifies that individual loan originators who work for the loan originator organization include employees or independent contractors who operate under a brokerage agreement with the loan originator organization. The Bureau notes that the requirement to ensure that each individual loan originator who works for the loan origination organization is licensed or registered to the extent applicable applies regardless of the date the loan originator began working directly for the loan originator organization.

36(f)(3)

Proposed § 1026.36(f)(3) set forth actions that a loan originator organization must take for its individual loan originators who are not required to be licensed and are not licensed pursuant to the SAFE Act and State SAFE Act implementing laws. Individual loan originators who are not required to be licensed generally include employees of depository institutions under Regulation G and organizations that a State has determined to be bona fide nonprofit organizations, in accordance with criteria in Regulation H, 12 CFR 1008.103(e)(7).

The proposed requirements in § 1026.36(f)(3)(ii) applied to unlicensed individual loan originators two of the core standards from SAFE Act State licensing requirements: the criminal background standards and the financial responsibility, character, and general fitness standards. Proposed § 1026.36(f)(3)(iii) would also have required loan originator organizations to provide periodic training to these individual loan originators, a requirement that is analogous to but, as discussed below, more flexible than the continuing education requirement that applies to individuals who have SAFE Act-compliant State licenses.

As explained in the proposal, the Bureau believes its approach is consistent with both the SAFE Act's application of the less stringent registration standards to employees of depository institutions and Regulation H's provision for States to exempt employees of bona fide nonprofit organizations from State licensing (and registration). The Bureau believes that the decision in both cases not to apply the full SAFE Act licensing, training, and screening requirements was based in part on an assumption that these institutions already carry out basic screening and training of their employee loan originators to comply with prudential regulatory requirements or to ensure a minimum level of protection of and service to consumers (consistent with the charitable or similar purposes of nonprofit organizations). The Bureau explained that the proposed requirements in § 1026.36(f)(3) would help ensure that this assumption is in fact accurate and that all individual loan originators meet core standards of integrity and competence, regardless of the type of loan originator organization for which they work, without imposing undue or duplicative obligations on depository institutions and bona fide nonprofit employers.

The Bureau did not propose to apply to employees of depository institutions and bona fide nonprofit organizations the more stringent requirements that apply to individuals seeking a SAFE Act-compliant State license: to pass a standardized test and to be covered by a surety bond. The Bureau explained that it had not found evidence that consumers who obtain mortgage loans from depository institutions and bona fide nonprofit organizations face risks that are not adequately addressed through existing safeguards and proposed safeguards in the proposal. However, the Bureau stated that it will continue to monitor the market to consider whether additional measures are warranted.

Several bank and credit union commenters objected to the Bureau imposing any qualification standards on their individual loan originators, arguing that doing so is inconsistent with the SAFE Act's statutory exemption of employees of depository institutions from licensing requirements. One commenter stated that a better way to increase standards for loan originators would be for Congress to amend the SAFE Act rather than through a regulation. Several bank commenters objected to qualification standards, which they perceived as requiring their individual loan originator employees to meet all of the standards of loan originators who are subject to State licensing. One commenter stated it is inappropriate to impose any standards that apply under State licensing to depository institution employees because those standards were intended for nondepository creditors and brokers, which the commenter stated use questionable business practices. Several credit union and bank trade associations stated that compliance with SAFE Act registration should constitute ''equivalent compliance'' with the Dodd-Frank Act requirement for loan originators to be qualified. One commenter stated that the qualification standards should apply only to nondepository institutions that fail to comply with the SAFE Act.

Many bank and credit union commenters stated that the proposed qualification standards were both duplicative of practices that they already routinely undertake and would also be burdensome for them to implement because of the cost of ensuring compliance and demonstrating compliance to examiners. Some bank commenters stated that the Bureau had cited no evidence that their individual loan originators were not qualified or that the proposed standards would benefit consumers. Other commenters encouraged the Bureau to study the issue further. One bank stated that it would be unfair to impose TILA liability on depository institutions for failing to ensure their employees meet the qualification standards, but not on nondepository institutions. The commenter stated that, if SAFE Act licensing standards are burdensome for nondepository institutions, then the solution is for Congress to repeal them.

One State association of banks stated that its member banks do not object to this part of the proposal because they already comply with the proposed screening and training standards. Several commenters supported the proposal as a step toward more equal treatment of depository institutions and nondepository institutions through the establishment of basic loan originator qualification standards and also recognized that depository institutions already provide training to their loan originator employees. A State association of mortgage bankers supported the proposal because it would prevent unsuitable and unscrupulous individuals from seeking employment at institutions with lower standards.

Numerous nondepository institution commenters supported the qualification standards in the proposal but were critical of the proposal for not imposing more rigorous requirements on depository institutions. One commenter stated that the Bureau had committed to fully ''leveling the playing field'' between depository and nondepository institutions but had failed to do so in the proposal. Commenters stated that, when they have hired former depository institution employees as loan originators, they have found them to be highly unprepared. Several commenters objected that the proposal did not include a requirement for loan originators employed by depository institutions to take the standardized test that applicants for State loan originator licenses must take. One commenter stated that depository institution loan originators are not capable of passing the standardized test, and that those who do take and fail the test simply continue to serve consumers poorly at a bank. Others objected that the proposal did not require depository institutions' individual loan originator employees to take the minimum number of hours of NMLSR-approved classes that State license applicants and licensees must take. One commenter who reported working at both depository and nondepository institutions stated that the training at depository institutions is inferior.

Still other commenters objected that the proposal permitted depository institutions to self-police (*i.e.,* to determine whether their own individual loan originator employees meet the proposed standards); some commenters stated that the rule should impose State licensing on all loan originators to require State regulators to make these determinations. Several commenters stated that any disparity between the standards that apply to depository and nondepository loan originators creates an unfair competitive advantage for depository institutions. One association of mortgage brokers stated that consumers assume that banks provide screening and training to their loan originators but that the assumption is incorrect.

The Bureau disagrees with the assertion that the promulgation of qualification standards is inconsistent with Congressional intent. In enacting the SAFE Act, Congress imposed licensing (and registration) requirements on individual loan originators who are not employees of depository institutions and imposed less stringent registration requirements for individual loan originators who are employees of depository institutions. In enacting the Dodd-Frank Act, Congress then mandated all loan originators ''when required'' comply with the licensing and registration requirements of other applicable State or Federal law, including the SAFE Act, and also imposed an additional requirement that they be ''qualified.'' Congress left significant discretion to the Bureau to determine what additional standards a loan originator must meet to demonstrate compliance with the new ''qualified'' requirement, but the Bureau believes that Congress would not have imposed the requirement in the first place if it had not intended to create a meaningful protection for consumers. The Bureau also does not assume that Congress intended to disturb the basic framework of the SAFE Act with regard to licensing and registration, given that it limited the duty to be licensed only to situations ''when required'' by other law. The Bureau declines to read the latter provision out of the Dodd-Frank Act or to perpetuate uncertainty by leaving the statutory requirement undefined.

As it explained in the proposal, the Bureau sought to define certain minimum qualification standards for all loan originators to allow consumers to be confident that all loan originators meet core standards of integrity and competence, regardless of the type of institution for which they work. The standards also serve to ensure that depository institutions in fact carry out basic screening and provide basic training to their employee loan originators because the assumption that they do so was, in the Bureau's view, a critical component of Congress's decision to exempt them from State licensing requirements of the SAFE Act. Moreover, the standards implement Congress's determination reflected in the Dodd-Frank Act that all loan originators, including depository loan originators who are exempt from SAFE Act licensing, must be qualified. In this sense, one purpose of the proposal was to help equalize the treatment of and compliance burdens on depository and nondepository institutions.

The Bureau emphasizes, however, that the provisions of the final rule are not intended to achieve a perfectly level playing field, such as by imposing requirements on depository institutions for the sake of mechanically equalizing certain burdens and costs faced by depository and nondepository institutions. Nor do the provisions impose on depository institution individual loan originators all of the requirements of full licensing, as some nonbank commenters suggested. Instead, the provisions are intended to ensure that consumers receive certain basic benefits and protections, regardless of the type of institution with which they transact business. For this reason, the Bureau declines to adopt the bank commenter's suggestion that compliance with the SAFE Act be deemed to be adequate to comply with the separate requirement for loan originators to be qualified. Similarly, the Bureau is declining to apply the qualification standards only to nondepository institutions whose individual loan originators act in violation of the SAFE Act and State licensing laws, as suggested by one commenter.

In proposing to define the minimum qualification standards, the Bureau carefully evaluated the benefits of these requirements as well as the burdens to loan originators. The Bureau continues to believe that the proposed standards, as further clarified below, will not impose significant burdens on loan originator organizations and will provide important consumer protections. As many bank and credit union commenters stated, most depository institutions already comply with the criminal background and screening provisions and provide training to their loan originators as a matter of sound business practice and to comply with the requirements and guidance of prudential regulators. The qualification standards build on these requirements and provide greater parity and clarity for criminal background and character standards across types of institution. The Bureau recognizes that the consequences for an individual who is determined not to meet the standards is significant, but it does not believe that many individual loan originators will be affected. The Bureau's view is that there is no reason why a consumer should expect that a loan originator who fails to meet the criminal background and character standards for loan originators at one class of institution should be able to act as a loan originator for that consumer at another class of institution.

The Bureau disagrees with some commenters' assertions that the provisions would result in significantly higher compliance burden compared with existing requirements. For example, as further discussed below, a depository institution will not be required to obtain multiple criminal background reports or undertake multiple reviews of a criminal background report. Instead, the required criminal background report is the same report the institution already obtains under Regulation G after submission of the individual's fingerprints to the NMLSR (12 CFR 1007.103(d)(1)(ix) and 1007.104(h)). In reviewing the criminal background report, the institution will be required to apply somewhat broader criteria for disqualifying crimes. Similarly, the training provisions comport with consumers' legitimate expectations that a loan originator should be knowledgeable of the legal protections and requirements that apply to the types of loans that the individual originates. As further discussed below, the provisions seek to ensure this outcome while avoiding imposition of training requirements that needlessly duplicate training that loan originators already receive.

The Bureau also disagrees with one commenter's assertion that the provisions unfairly impose TILA liability for compliance with the qualifications requirements on depository institutions, but not on nondepository institutions. As discussed above, § 1026.36(f)(2) imposes a TILA obligation on all loan originator organizations—mortgage brokers and both nondepository and depository institution mortgage creditors—to ensure that their individual loan originators are licensed or registered to the extent required under the SAFE Act, its implementing regulations, and State SAFE Act implementing laws.

The Bureau is not adopting a requirement, advocated by several commenters, that all loan originators take and pass the NMLSR-approved standardized test that currently applies only to applicants for State loan originator licenses. The Bureau recognizes that independent testing of loan originators' knowledge provides a valuable consumer protection and that individual loan originators at depository institutions are not currently required to take and pass the test. Imposing such a requirement for all individual loan originators, however, would carry with it significant costs and burdens for depository institutions. In addition, the Bureau does not at this time have evidence to show that combining existing bank practices with the new training requirements contained in this final rule will be inadequate to ensure that the knowledge of depository loan originators is comparable to that of loan originators who pass the standardized test. In light of the short rulemaking timeline imposed by the Dodd-Frank Act, and cognizant of the potential burdens on the NMLSR and its approved testing locations that could result from expansion of the test requirement to bank and credit union employees, the Bureau believes it is prudent to continue studying the issue to determine if further qualification requirements are warranted.

The Bureau is not adopting the suggestion of some commenters to impose State licensing requirements on all loan originators. The commenters suggested that such a measure was needed because it is not appropriate for depository institutions to ''self-police'' by making the required determinations about their own loan originator employees. The Bureau believes requiring registration and licensing only ''when required'' already under other State or Federal law, including the SAFE Act, is more faithful to the statutory directive in section 129B(b)(1)(A) of TILA. That statutory language in that section makes clear that Congress intended to require compliance with existing State and Federal licensing requirements but did not intend to create new licensing requirements.

36(f)(3)(i)

Proposed § 1026.36(f)(3)(i) provided that the loan originator organization must obtain for each individual loan originator who is not required to be licensed and is not licensed as a loan originator under the SAFE Act a State and national criminal background check; a credit report from a nationwide consumer reporting agency in compliance, where applicable, with the requirements of section 604(b) of the Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681b; and information about any administrative, civil, or criminal findings by any court or government agency. Proposed comment 36(f)(3)(i)–1 clarified that loan originator organizations that do not have access to this information in the NMLSR (generally, bona fide nonprofit organizations) could satisfy the requirement for a criminal background check by obtaining a criminal background check from a law enforcement agency or commercial service. It also clarified that such a loan originator organization could satisfy the requirement to obtain information about administrative, civil, or criminal determinations by requiring the individual to provide it with this information directly to the loan originator organization. The Bureau noted that the information in the NMLSR about administrative, civil, or criminal determinations about an individual is generally supplied to the NMLSR by the individual, rather than by a third party. The Bureau invited public comment on whether loan originator organizations that do not have access to this information in the NMLSR should be permitted to satisfy the requirement by requiring the individual loan originator to provide it directly to the loan originator organization or if, instead, there are other means of obtaining the information that are more reliable or efficient.

One commenter stated that performing a criminal background check is no longer necessary for loan originators because they can no longer be compensated based on the terms of a residential mortgage loan.

A bank commenter requested that the Bureau clarify the proposed regulatory text requiring a ''State and national criminal background check'' because it could be read to require a separate State criminal background check for each State in which the loan originator operates. The commenter asked for clarification that the FBI criminal background check obtained from the NMLSR is sufficient.

A bank commented that it was not clear what protection was achieved by requiring a depository institution to review the credit report of a prospective individual loan originator. The commenter speculated that the only reason the SAFE Act requires review of credit reports of prospective individual loan originator licensees may be that mortgage brokers, unlike banks, are often thinly capitalized, such that the financial circumstances of the individual applicant are relevant. The commenter urged that, in a depository institution, the financial circumstances of a loan originator are not relevant to consumer protection.

An association of banks stated that the consumer benefit of requiring review of credit reports of prospective loan originators is outweighed by the expense and burden to the bank. A credit union stated that credit history rarely correlates with operating unfairly or dishonestly and therefore there is no benefit to reviewing it. An association of credit unions stated that all credit unions already use credit reports to evaluate prospective employees.

Finally, commenters requested clarification on how to reconcile the requirement to review credit reports with FCRA provisions and Equal Employment Opportunity Commission (EEOC) guidance on employer credit checks. They also requested clarification of language that could have been read to suggest that credit reports should be obtained from the NMLSR.

The Bureau disagrees with the comment that screening for criminal background is no longer warranted for loan originators merely because loan originator compensation cannot vary based on loan terms. Steering a consumer to a particular loan based on the compensation the loan originator expects to receive is not the only way in which a loan originator could cause harm to a consumer. The Bureau's view is that consumers should not have their financial well-being subject to the influence of a loan originator with a recent history of felony convictions.

The Bureau is adopting § 1026.36(f)(3)(i)(A) as proposed but with the bank commenter's suggested clarification to prevent any misunderstanding that multiple State criminal background checks are required for an individual. The Bureau is revising the regulatory text to refer simply to ''a criminal background check from the NMLSR'' (or in the case of a loan originator organization without access to the NMLSR, ''a criminal background check'') and adding an express statement to comment 36(f)(3)(i)–1 that a loan originator organization with access to the NMLSR satisfies the requirement by reviewing the standard criminal background check that the loan originator receives upon submission of the individual loan originator's fingerprints to the NMLSR. The Bureau is also making minor organizational revisions to the comment to prevent any implication that the credit report must be obtained from the NMLSR.

The Bureau disagrees with the commenter's statement that the only reason the SAFE Act requires review of a credit report of an applicant for a State license is the thin capitalization of mortgage brokers and that, therefore, there is no consumer protection achieved by requiring a loan originator organization to review the credit report of an individual employed by a depository institution. Instead, the Bureau believes the credit report is useful for determining whether an individual meets the criteria for financial responsibility, which is a requirement under the SAFE Act and, as further discussed below, this final rule. The Bureau believes the cost of obtaining a credit report is modest and, as a number of commenters stated, many credit unions and depository institutions already obtain credit reports as part of established hiring and screening procedures.

Finally, the Bureau agrees that the credit report must be obtained in compliance with provisions of the FCRA on employer credit checks. The Bureau is not aware of any conflict between its rule and EEOC guidance on obtaining credit reports for employment screening.[154] Accordingly, it is adopting § 1026.36(f)(3)(i)(B) as proposed, requiring that the credit report be obtained in compliance with section 604(b) of the FCRA.

The Bureau is providing in § 1026.36(f)(3)(i) and in comments 36(f)(3)(i)–1 and 36(f)(3)(i)–2 that the requirement to obtain the specified information only applies to an individual whom the loan originator organization hired on or after January 10, 2014 (or whom the loan originator organization hired before this date but for whom there were no applicable statutory or regulatory background standards in effect at the time of hire or before January 10, 2014, used to screen the individual). Since these provisions track similar provisions in § 1026.36(f)(3)(ii) and related comments, they are discussed in more detail in the section-by-section analysis of those provisions.

36(f)(3)(ii)

Proposed § 1026.36(f)(3)(ii) specified the standards that a loan originator organization must apply in reviewing the information it is required to obtain. The standards were the same as those that State agencies must apply in determining whether to grant an individual a SAFE Act-compliant loan originator license. Proposed comment 36(f)(3)(ii)–1 clarified that the scope of the required review includes the information required to be obtained under § 1026.36(f)(3)(i) as well as information the loan originator organization has obtained or would obtain as part of its reasonably prudent hiring practices, including information from application forms, candidate interviews, and reference checks.

[154] *See, e.g.,* EEOC, informal discussion letter, *http://www.eeoc.gov/eeoc/foia/letters/2010/titlevii-employer-creditck.html.*

36(f)(3)(ii)(A)

Under proposed § 1026.36(f)(3)(ii)(A), a loan originator organization would be required to determine that the individual loan originator has not been convicted (or pleaded guilty or *nolo contendere*) to a felony involving fraud, dishonesty, a breach of trust, or money laundering at any time, or any other felony within the preceding seven-year period. Depository institutions already apply similar standards in complying with the SAFE Act registration requirements under 12 CFR 1007.104(h) and other applicable Federal requirements, which generally prohibit employment of individuals convicted of offenses involving dishonesty, money laundering, or breach of trust. For depository institutions, the incremental effect of the proposed standard generally would be to expand the scope of disqualifying crimes to include felonies other than those involving dishonesty, money laundering, or breach of trust if the conviction was in the previous seven years. The Bureau stated that it does not believe that depository institutions or bona fide nonprofit organizations currently employ many individual loan originators who would be disqualified by the proposed provision, but that the proposed provision would give consumers confidence that individual loan originators meet common minimum criminal background standards, regardless of the type of institution or organization for which they work.

The proposed description of potentially disqualifying convictions was the same as that in the SAFE Act provision that applies to applicants for State licenses and includes felony convictions in foreign courts. The Bureau recognized that records of convictions in foreign courts may not be easily obtained and that many foreign jurisdictions do not classify crimes as felonies. The Bureau invited public comment on what, if any, further clarifications the Bureau should provide for this provision.

One commenter observed that criminal background checks, credit reports, and the NMLSR information on disciplinary and enforcement actions could contain errors. Another commenter stated that an individual must be allowed to correct any incorrect information in the report. Several commenters asked for clarification about what information a loan originator organization must or may consider in making the determination and specifically asked the Bureau to clarify that it should be able to rely on information and explanations provided by the individual.

Several bank commenters stated that they already perform criminal background checks pursuant to the FDIA and that the proposed standard would be duplicative and unnecessary. Commenters stated that the provision would be especially burdensome if they were required to apply it to current employees who have already been screened for compliance with the FDIA.

One commenter objected to the provision disqualifying individuals for seven years following the date of conviction for felonies not involving fraud, dishonesty, breach of trust, or money laundering. The commenter stated that the provision was too strict and that the standard should consider all the relevant factors, including whether these types of crimes are relevant to a loan originator's job. Other commenters stated that criminal background standards have a disparate impact on minorities and that EEOC enforcement guidelines state that standards for felonies should only exclude individuals convicted of crimes that relate to their jobs. One commenter requested clarification on how pardoned and expunged convictions would be treated. Depository institutions noted that the look-back periods under the FDIA and Federal Credit Union Act for certain enumerated crimes are ten years.

The Bureau agrees with the commenter's observation that criminal background checks, as well as credit reports and NMLSR information on enforcement actions, could contain errors. For this reason, the loan originator organization can and should permit an individual to provide additional evidence to demonstrate that the individual meets the standard, consistent with the requirement in § 1026.36(f)(3)(ii) that the loan originator organization consider any ''other information reasonably available'' to it. To clarify this, the Bureau is revising comment 36(f)(3)(ii)–1 to state expressly that this other information includes, in addition to information from candidate interviews, ''other reliable information and evidence provided by a candidate.''

The Bureau disagrees that the requirement to review a criminal background check to determine compliance with the SAFE Act criminal background standard is duplicative of existing requirements of prudential regulators or of Regulation G. As discussed above, the provision does not require a depository institution to obtain multiple criminal background checks or to conduct multiple reviews. A depository institution could meet the requirement in this final rule by obtaining the same criminal background check required by the prudential regulators and Regulation G and reviewing it one time for compliance with applicable criminal background standards, including the standard of this final rule.

The Bureau disagrees with the commenters that urged using a shorter cutoff time and narrower list of disqualifying crimes. Congress has judged the standard as directly relevant to the job of being a loan originator. As discussed above, the standard is largely the same standard that the SAFE Act imposes for applicants for State loan originator licenses. The Bureau sees no reason why a loan originator who categorically fails to meet the criminal background and character standards for loan originators at one class of institution should categorically be permitted to act as a loan originator at another class of institution. The Bureau believes a seven-year prohibition period is not too strict of a standard to protect consumers from the risk that such individuals could present to them.

In view of these considerations, the Bureau does not believe it would be appropriate to establish standards in this rule that are materially different from those applicable under the SAFE Act. However, as noted by commenters, other regulators, including the Federal Deposit Insurance Corporation (FDIC), are already empowered to consent to the employment of individuals who would otherwise be barred under the Federal Deposit Insurance Act or other relevant laws because of certain prior convictions. To harmonize the qualification standards with those of other regulators, the Bureau is providing in the final rule that a conviction (or plea of guilty or *nolo contendere*) does not render an individual unqualified under § 1026.36(f) if the FDIC (or the Board of Governors of the Federal Reserve System, as applicable) pursuant to section 19 of the Federal Deposit Insurance Act, 12 U.S.C. 1829, the National Credit Union Administration pursuant to section 205 of the Federal Credit Union Act, 12 U.S.C. 1785(d), or the Farm Credit Administration pursuant to section 5.65(d) of the Farm Credit Act of 1971, 12 U.S.C. 227a–14(d), has granted consent to employ the individual notwithstanding the conviction or plea that would have rendered the individual barred under those laws.

In response to commenter requests, the Bureau is clarifying in § 1026.36(f)(3)(ii)(A)(*2*) that a crime is a felony only if, at the time of conviction, it was classified as such under the law of the jurisdiction under which the individual was convicted, and that expunged and pardoned convictions do not render an individual unqualified. These clarifications are consistent with implementation of the SAFE Act criminal background standards in § 1008.105(b)(2) of Regulation H. However, the Bureau is not adopting the provision in the proposal that would have disqualified an individual from acting as a loan originator because of a felony conviction under the law of a foreign jurisdiction. The Bureau is concerned that loan originator organizations might not be able to determine whether a foreign jurisdiction classifies crimes as felonies, and foreign convictions may be unlikely to be included in a criminal background check.

The Bureau is adopting § 1026.36(f)(3)(ii)(A) with these revisions and clarifications.

36(f)(3)(ii)(B)

Under proposed § 1026.36(f)(3)(ii)(B), a loan originator organization would have been required to determine that the individual loan originator has demonstrated financial responsibility, character, and general fitness to warrant a determination that the individual loan originator will operate honestly, fairly, and efficiently.[155] This standard is identical to the standard that State agencies apply to applicants for SAFE Act-compliant loan originator licenses, except that it does not include the requirement to determine that the individual's financial responsibility, character, and general fitness are ''such as to command the confidence of the community.'' The Bureau believes that responsible depository institutions and bona fide nonprofit organizations already apply similar standards when hiring or transferring any individual into a loan originator position. The proposed requirement formalized this practice to ensure that the determination considers reasonably available, relevant information to ensure that, as with the case of the proposed criminal background standards, consumers could be confident that all individual loan originators meet common minimum qualification standards for financial responsibility, character, and general fitness. Proposed comment 36(f)(3)(ii)(B)–1 clarified that the review and assessment need not include consideration of an individual's credit score but must include consideration of whether any of the information indicates dishonesty or a pattern of irresponsible use of credit or of disregard for financial obligations. As an example, the comment stated that conduct revealed in a criminal background report may show dishonest conduct, even if the conduct did not result in a disqualifying felony conviction. It also distinguished delinquent debts that arise from extravagant spending from those that arise, for example, from medical expenses. The proposal stated the Bureau's view that an individual with a history of dishonesty or a pattern of irresponsible use of credit or of disregard for financial obligations should not be in a position to interact with or influence consumers in the loan origination process, during which consumers must decide whether to assume a significant financial obligation and determine which of any presented mortgage options is appropriate for them.

The Bureau recognized that, even with the proposed comment, any standards for financial responsibility, character, and general fitness inherently include subjective components. During the Small Business Review Panel, some Small Entity Representatives expressed concern that the proposed standard could lead to uncertainty whether a loan originator organization was meeting it. The proposed standard excluded the phrase ''such as to command the confidence of the community'' to reduce the potential for such uncertainty. Nonetheless, in light of the civil liability imposed under TILA, the Bureau invited public comment on how to address this concern while also ensuring that the loan originator organization's review of information is sufficient to protect consumers. For example, the Bureau asked whether a loan originator organization that reviews the required information and documents a rational explanation for why relevant negative information does not show that the standard is violated should be presumed to have complied with the requirement.

Several depository institution commenters stated that the proposed standards for financial responsibility,

[155] While the proposed regulatory text also included the requirement to determine that the individual's financial responsibility, character, and general fitness are ''such as to command the confidence of the community,'' the preamble indicated that this requirement would not be included. 77 FR at 55327. The inclusion of that language in the regulatory text was inadvertent.

character, and general fitness were too subjective. One civil rights organization commenter expressed concern that the standards could be used by loan originator organizations as a pretext for discriminating against job applicants. Several bank and credit union commenters stated that subjective or vague standards could lead to litigation by rejected applicants. Many of the same commenters requested that the Bureau include a safe harbor under the standard, such as a minimum credit score. One bank commenter noted it already follows FDIC guidance that calls on depository institutions to establish written procedures for screening applicants. Some depository commenters stated that an individual could have negative information in his or her credit report resulting from divorce or the death of a spouse, and that it is usually not possible to determine from a credit report whether negative information was the result of dishonesty or profligate spending, rather than situations beyond the control of the individual. One commenter agreed with the Bureau's view that the language from the SAFE Act standard requiring that an individual ''command the confidence of the community'' is especially vague and should be omitted.

The Bureau appreciates and agrees with the concerns expressed in several of the public comments. The Bureau continues to believe that it is important for covered loan originator organizations to evaluate carefully the financial responsibility, character, and general fitness of individuals before employing them in the capacity of a loan originator, but the Bureau also agrees that loan originator organizations should not face increased litigation risk or uncertainty about whether they are properly implementing a standard that necessarily includes a subjective component. Accordingly, although the Bureau is adopting § 1026.36(f)(3)(ii)(B) as described above, it is revising comment 36(f)(3)(ii)(B)–1 to provide further interpretation concerning factors to consider in making the required determinations. In addition, the Bureau is adding comment 36(f)(3)(ii)(B)–2 to provide a procedural safe harbor so that loan originator organizations can have greater certainty that they are in compliance.

Comment 36(f)(3)(ii)(B)–1 is revised to remove references to factors that may not be readily determined from the information that the loan originator organization is required to obtain under § 1026(f)(3)(i) and to conform the comment more closely to the factors that State regulators use in making the corresponding determinations for loan originator licensing applicants. For example, it is revised to avoid any implication that a loan originator organization is expected to be able to determine from a credit report whether an individual's spending has been extravagant or has acted dishonestly or subjectively decided to disregard financial obligations. The comment enumerates factors that can be objectively identified for purposes of the financial responsibility determination, including the presence or absence of current outstanding judgments, tax liens, other government liens, nonpayment of child support, or a pattern of bankruptcies, foreclosures, or delinquent accounts. Following the practice of many States, the comment specifies that debts arising from medical expenses do not render an individual unqualified. It further specifies that a review and assessment of character and general fitness is sufficient if it considers, as relevant factors, acts of dishonesty or unfairness, including those implicated in any disciplinary actions by a regulatory or professional licensing agency as may be evidenced in the NMLSR. The comment, however, does not mandate how a loan originator organization must weigh any information that is relevant under the specified factors. It clarifies that no single factor necessarily requires a determination that the individual does not meet the standards for financial responsibility, character, or general fitness, provided that the loan originator organization considers all relevant factors and reasonably determines that, on balance, the individual meets the standards.

As the Bureau anticipated in the proposal, even with clarifications about the factors that make a loan originator organization's review and assessment of financial responsibility, character, and fitness sufficient, the provision still requires significant subjective judgment. Accordingly, the Bureau believes that a procedural provision is warranted to ensure that loan originator organizations have reasonable certainty that they are complying with the requirement. Accordingly, comment 36(f)(3)(ii)(B)–2 clarifies that a loan originator organization that establishes written procedures for determining whether individuals meet the financial responsibility, character, and general fitness standards under § 1026.36(f)(3)(ii)(B) and follows those written procedures for an individual is deemed to have complied with the requirement for that individual. The comment specifies that such procedures may provide that bankruptcies and foreclosures are considered under the financial responsibility standard only if they occurred within a timeframe established in the procedures. In response to the suggestion in public comments, the comment provides that, although review of a credit report is required, such procedures are not required to include a review of a credit score.

The Bureau declines to provide the safe harbor suggested by the commenter that further review and assessment of financial responsibility is not required for an individual with a credit score exceeding a high threshold. The Bureau is concerned that credit scores are typically developed for the purpose of predicting the likelihood of a consumer to repay an obligation and for similar purposes. A credit score may not correlate to the criteria for financial responsibility in this final rule. It is the Bureau's understanding that, for this reason, the major consumer reporting agencies do not provide credit scores on credit reports obtained for the purpose of employment screening.

The procedural safe harbor provides a mechanism for a loan originator organization to specify how it will weigh information under the factors identified in comment 36(f)(3)(ii)(B)–1, including instances identified by the commenters, such as financial difficulties arising from divorce or the death of a spouse or outstanding debts or judgments that the individual is in the process of satisfying.

The Bureau notes that, as further discussed below, the final rule requires in § 1026.36(j) that depository institutions must establish and maintain procedures for complying with § 1026.36(d), (e), (f), and (g), including the requirements to make the determinations of financial responsibility, character, and general fitness. The Bureau expects that a depository institution could have a single set of procedures to comply with these two provisions, as well as, for example, those under § 1007.104 of Regulation G and those in the regulations and guidance of prudential regulators, such as the FDIC guidance on screening candidates identified by the commenter.

The proposal would not have required employers of unlicensed individual loan originators to obtain the covered information and make the required determinations on a periodic basis. Instead, it contemplated that these employers would obtain the information and make the determinations under the criminal, financial responsibility, character, and general fitness standards before an individual acts as a loan originator in a closed-end consumer credit transaction secured by a dwelling. However, the Bureau invited public comment on whether such determinations should be required on a periodic basis or whether the employer of an unlicensed loan originator should be required to make subsequent determinations only when it obtains information that indicates the individual may no longer meet the applicable standards.

Commenters urged the Bureau to clarify that a loan originator organization is required to make the determinations only once, rather than periodically, or a second time only if the loan originator organization learns the individual loan originator has been convicted of a felony after the initial determination. Several commenters asked the Bureau to clarify that loan originator organizations are not required to make the determinations for individual loan originators who are already employed and have already been screened by the loan originator organization. Large bank commenters stated that having to make the determinations for current loan originator employees would be extremely burdensome.

The Bureau agrees that it would be burdensome and somewhat duplicative for a loan originator organization to have to obtain a credit report, a new criminal background check, and information about enforcement actions and apply retroactively the criminal background, financial responsibility, character, and general fitness standards of this final rule to individual loan originators that it had already hired and screened prior to the effective date of this final rule under the then-applicable standards, and is now supervising on an ongoing basis. As explained in the proposal, the Bureau believes that most loan originator organizations were already screening their individual loan originators under applicable background standards, and the Bureau does not seek to impose duplicative compliance burdens on loan originator organizations with respect to individual loan originators that they hired and in fact screened under standards in effect at the time of hire. Accordingly, this final rule clarifies in § 1026.36(f)(3)(i) and (ii) and in new comment 36(f)(3)(ii)–2 that the requirements apply for an individual that the loan originator organization hires on or after January 10, 2014, the effective date of these provisions, as well as for individuals hired prior to this date but for whom there were no applicable statutory or regulatory background standards in effect at the time of hire or before January 10, 2014, used to screen the individual.[156]

Additional revisions to § 1026.36(f)(3)(i) and (ii) and new comment 36(f)(3)(ii)–3 respond to the commenter's concerns about when a loan originator organization is required to make subsequent determinations. They specify that such determinations are required only if the loan originator organization has knowledge of reliable information indicating that the individual loan originator likely no longer meets the required standards, regardless of when the individual loan originator was previously hired and screened. As an example, comment 36(f)(3)(ii)–3 states that if the loan originator organization has knowledge of criminal conduct of its individual loan originator from a newspaper article, a previously obtained criminal background report, or the NMLSR, the loan originator organization must determine whether any resulting conviction, or any other information, causes the individual to fail to meet the standards in § 1026.36(f)(3)(ii), regardless of when the loan originator was hired or previously screened.

The Bureau believes that comments 36(f)(3)(ii)–2 and 36(f)(3)(ii)–3, taken together, provide an appropriate balance for determining when a loan originator organization is required to screen an individual loan originator hired prior to January 10, 2014, under the standards in § 1026.36(f)(3)(i) and (ii). The approach recognizes that, as the Bureau stated in the proposal, many loan originator organizations already screened their employees under applicable statutory or regulatory standards for criminal background, character, fitness, and financial responsibility that are similar to those in this final rule, prior to the this rule's effective date. To the extent that an individual was determined to meet such standards in effect at the time the individual was hired, but does not meet the standards of this final rule, the Bureau believes the loan originator organization is likely to have knowledge of reliable information indicating that may be the case. For example, the criminal background check that the loan originator organization previously obtained or an entry in the NMLSR may have indicate a felony conviction covered by this rule. Likewise, the loan originator organization is highly likely to have knowledge of the individual loan originator's character and fitness as a result of monitoring the individual's performance over the course of the individual's employment.

The Bureau does not agree that the subsequent review should apply only if the loan originator organization learns that the individual has committed a felony because such a rule would categorically exclude information that seriously implicates the financial responsibility, character, and general fitness standards. However, the Bureau notes that the procedural safe harbor discussed above provides a mechanism for loan originator organizations to adopt specific procedures for when and how such information is considered in subsequent determinations.

36(f)(3)(iii)

In addition to the screening requirements discussed above, proposed § 1026.36(f)(3)(iii) would have required loan originator organizations to provide periodic training to their individual loan originators who are not licensed under the SAFE Act and thus not covered by that Act's training requirements. The proposal provided that the training must cover the Federal and State law requirements that apply to the individual loan originator's loan origination activities. The proposed requirement was analogous to, but more flexible than, the continuing education requirement that applies to loan originators who are subject to SAFE Act licensing. Whereas the SAFE Act requires 20 hours of pre-licensing education and eight hours of preapproved classes every year, the proposed requirement is intended to be flexible to accommodate the wide range of loan origination activities in which loan originator organizations engage and for which covered individuals are responsible. For example, the proposed training provision would have applied to a large depository institution providing complex mortgage loan products as well as a nonprofit organization providing only basic home purchase assistance loans secured by a subordinate lien on a dwelling. The proposed provision also recognized that covered individuals may already possess a wide range of knowledge and skill levels. Accordingly, it required loan originator organizations to provide training to close any gap in the individual loan originator's knowledge of Federal and State law requirements that apply to the individual's loan origination activities.

The proposed requirement also differed from the analogous SAFE Act requirement by not including a requirement to provide training on

[156] The Bureau's decision not to apply certain qualification requirements otherwise imposed by this rule to loan originators hired before January 10, 2014, is also an exercise of the Bureau's authority under TILA section 105(a). This rule differentiates loan originators based on their date of hire to facilitate compliance.

ethical standards beyond those that amount to State or Federal legal requirements. In light of the civil liability imposed under TILA, the Bureau solicited public comment on whether there exist ethical standards for loan originators that are sufficiently concrete and widely applicable to allow loan originator organizations to determine what subject matter must be included in the required training, if the Bureau were to include ethical standards in the training requirement.

Proposed comment 36(f)(3)(iii)–1 included explanations of the training requirement and also described the flexibility available under § 1026.36(f)(3)(iii) regarding how the required training is delivered. It clarified that training may be delivered by the loan originator organization or any other party through online or other technologies. In addition, it stated that training that a Federal, State, or other government agency or housing finance agency has approved or deemed sufficient for an individual to originate loans under a program sponsored or regulated by that agency is sufficient to meet the proposed requirement, to the extent that the training covers the types of loans the individual loan originator originates and applicable Federal and State laws and regulations. It further stated that training approved by the NMLSR to meet the continuing education requirement applicable to licensed loan originators is sufficient to meet the proposed requirement to the extent that the training covers the types of loans the individual loan originator originates and applicable Federal and State laws and regulations. The proposed comment recognized that many loan originator organizations already provide training to their individual loan originators to comply with requirements of prudential regulators, funding agencies, or their own operating procedures. Thus, the proposed comment clarified that § 1026.36(f)(3)(iii) did not require training that is duplicative of training that loan originator organizations are already providing if that training meets the standard in § 1026.36(f)(3)(iii). These clarifications were intended to respond to questions that Small Entity Representatives raised during the Small Business Review Panel discussed above.

Several bank and credit union commenters stated that they already provide the training required under the proposal to comply with the requirements of prudential regulators. One commenter stated that more specific requirements are needed so that loan originator organizations can be certain they are in compliance. One commenter stated that the standard should cover training in legal requirements only and not in ethics. One credit union association expressed concern that regardless of what the rule provided, agency examiners would ultimately require credit union loan originators to take eight hours of NMLSR classes annually. A provider of NMLSR-approved training urged the Bureau to require loan originators to take 20 hours of NMLSR-approved classes initially and five hours annually thereafter, including classes in ethics. The commenter stated that depository institution employees should have to take NMLSR-approved training because many of the worst loan originators who contributed to the subprime lending crisis were employed by depository institutions. One bank commenter stated that a loan originator who opts to take and passes the national component of the NMLSR standardized test should be exempt from periodic training requirements, and that a loan originator who does receive training should be able to do so before or after obtaining a unique identifier issued by the NMLSR (also referred to as an NMLSR ID). The same commenter asked for clarification that a national bank-employed loan originator need not be trained in state legal requirements, and that a bank-employed loan originator should be presumed to be well trained and qualified.

As stated in the proposal, the Bureau agrees that the training that many depository institutions already provide to comply with prudential regulator requirements will be sufficient to meet the proposed requirement in § 1026.36(f)(3)(iii), which the Bureau is adopting without change. The Bureau did not propose to require covered individual loan originators to take a fixed number of NMLSR-approved classes initially or each year precisely out of the concern that such training could be largely duplicative of training that individual loan originators already receive. Accordingly, the Bureau is not adopting the commenter's suggestion that it require NMLSR-approved training. The Bureau notes that comment 36(f)(3)(iii)–1 clarifies that a loan originator organization may satisfy the training requirement by taking the NMLSR-approved continuing education class. The Bureau is not in a position to address the commenter's concern that prudential regulators would require individual loan originators to take NMLSR-approved classes notwithstanding the flexibility of Bureau's training requirement.

The Bureau also declines to adopt a provision that any individual loan originator employed by a bank, or an individual loan originator who opts to take and passes the NMLSR standardized test, should be deemed trained and qualified and therefore exempt from periodic training. The requirement that training be provided on a periodic basis addresses the fact that legal requirements change over time and that an individual's memory and knowledge of applicable requirements may fade over time. Taking and passing a test one time would therefore not be an adequate substitute for periodic training. Finally, the Bureau notes that the provision does not specify that training must be provided after a loan originator receives an NMLSR ID. It also does not provide for training to be reported to or tracked through the NMLSR.

The Bureau did not receive substantive comments indicating that there exists a definable body of ethical standards specific for loan originators and is not expanding the training requirement to mandate training in ethical standards in addition to the proposed training in legal requirements. Finally, the Bureau does not believe it is necessary or practical to specify in a generally applicable rule which laws apply to the wide range of loans originated by loan originators at various loan originator organizations, and therefore what subject matter must be included in an individual loan originator's training. The Bureau believes each loan originator organization should know the types of loans that each of its individual loan originators originates and which substantive legal requirements (including provisions of State law, to the extent applicable) apply to those loans. The Bureau notes that the training requirements under § 1026.36(f)(3)(iii) apply individual loan originators regardless of when they were hired.

36(g) Name and NMLSR Identification Number on Loan Documents

TILA section 129B(b)(1)(B), which was added by Dodd-Frank Act section 1402(a), provides that ''subject to regulations'' issued by the Bureau, a mortgage originator shall include on ''all loan documents any unique identifier of the mortgage originator'' issued by the NMLSR. Individuals who are subject to SAFE Act registration or State licensing are required to obtain an NMLSR ID, and many organizations also obtain NMLSR IDs pursuant to State or other requirements. Proposed § 1026.36(g), as described further below, would have implemented the statutory requirement that mortgage originators must include their NMLSR ID on loan documents and would have provided several clarifications. The Bureau stated its belief that the purpose of the statutory requirement is not only to permit consumers to look up the loan originator's record on the consumer access Web site of the NMLSR (*www.nmlsconsumeraccess.org*) before proceeding further with a mortgage transaction, but also to help ensure accountability of loan originators both before and after a transaction has been originated.

36(g)(1)

Proposed § 1026.36(g)(1) provided that loan originators must include both their NMLSR IDs and their names on loan documents because, without the associated names, a consumer may not understand whom or what the NMLSR ID number serves to identify. The proposal explained that having the loan originator's name may help consumers understand that they have the opportunity to assess the risks associated with a particular loan originator in connection with the transaction, which in turn promotes the informed use of credit. The Bureau explained that it believed that this was consistent with TILA section 105(a)'s provision for additional requirements that are necessary or proper to effectuate the purposes of TILA or to facilitate compliance with TILA. These provisions also clarified, consistent with the statutory requirement that mortgage originators include ''any'' NMLSR ID, that the requirement applies if the organization or individual loan originator has ever been issued an NMLSR ID. For example, an individual loan originator who works for a bona fide nonprofit organization is not required to obtain an NMLSR ID, but if the individual was issued an NMLSR ID for purposes of a previous job, that NMLSR ID must be included. Proposed § 1026.36(g)(1) also provided that the name and NMLSR IDs must be included each time any of these documents is provided to a consumer or presented to a consumer for signature.

Proposed comment 36(g)(1)–1 clarified that for purposes of § 1026.36(g), creditors would not be excluded from the definition of ''loan originator.'' Proposed comment 36(g)(1)–2 clarified that the proposed requirement applied regardless of whether the organization or individual loan originator is required to obtain an NMLSR ID under the SAFE Act or otherwise. Proposed § 1026.36(g)(1)(ii), recognizing that there may be transactions in which more than one individual meets the definition of a loan originator, provided that the individual loan originator whose NMLSR ID must be included is the individual with primary responsibility for the transaction at the time the loan document is issued.

In its 2012 TILA–RESPA Proposal, the Bureau proposed to integrate TILA and RESPA mortgage disclosure documents as mandated by sections 1032(f), 1098, and 1100A of the Dodd-Frank Act. 12 U.S.C. 5532(f); 12 U.S.C. 2603(a); 15 U.S.C. 1604(b). As discussed below, the loan documents that would be required to include the name and NMLSR IDs include these mortgage disclosure documents. That separate rulemaking also addresses inclusion of the name and NMLSR IDs on the proposed integrated disclosures, as well as the possibility that in some circumstances more than one individual may meet the criteria that require inclusion of the NMLSR ID. To ensure harmonization between the two rules, proposed comment 36(g)(1)(ii)–1 stated that, if more than one individual acts as a loan originator for the transaction, the requirement in § 1026.36(g)(1)(ii) may be met by complying with the applicable provision governing disclosure of NMLSR IDs in rules issued by the Bureau pursuant to Dodd-Frank Act sections 1032(f), 1098, and 1100A.

Commenters generally supported the proposed provision as a way to increase accountability. One commenter urged the Bureau to change the format of NMLSR IDs to allow consumers to determine whether the loan originator is licensed or registered because the commenter was concerned that a consumer might incorrectly assume that all loan originators are licensed. Several commenters asked for more clarity on how to determine which loan originator has primary responsibility for a transaction and has to include his or her name and NMLSR ID on a document. Commenters stated that the loan originator with primary responsibility should be, variously, the person who took a consumer's application, the person whose name appears on the loan application under Federal Housing Finance Agency requirements, the person who is the consumer's point of contact, or the person reasonably determined by the loan originator organization. One commenter asked for clarification that the names and NMLSR IDs must appear only once on each loan document rather than on every page of the loan document. Another commenter urged the Bureau to standardize exactly where on each loan document the names and NMLSR IDs must appear. Another commenter asked the Bureau to confirm that if the loan originator with primary responsibility for a transaction changes during the course of the transaction, issued loan documents do not have to be reissued merely to change the name and NMLSR on those documents.

In response to commenters' requests for more specificity on how to determine which individual loan originator has primary responsibility, the Bureau is clarifying in comment 36(g)(1)(ii)–1 that a loan originator organization that establishes and follows a reasonable, written policy for determining which individual loan originator has primary responsibility for the transaction at the time the document is issued complies with the requirement. The Bureau notes that, as further discussed below, the final rule requires in § 1026.36(j) that depository institutions must establish and maintain procedures for complying with § 1026.36(d), (e), (f), and (g) of this section, including the requirement to include names and NMLSR IDs on loan documents. The Bureau is also clarifying in comment 36(g)(1)–2 that, even if the loan originator does not have an NMLSR ID, the loan originator must still include his or her name on the covered loan documents.

The Bureau agrees with the comment urging that the names and NMLSR IDs should be required to appear only once on each loan document rather than on each page of a loan document. New comment 36(g)(1)–3 includes this clarification. The Bureau does not agree that it should mandate exactly where the names and NMLSR IDs must appear on the credit application, note, and security instrument. Doing so would be impractical because State and local law may specify placement of items on documents that are to be recorded, such as the note and security instrument, and revising the format of the most commonly used credit application forms would implicate other rules beyond the scope of this rulemaking.

Finally, the Bureau agrees that, if the loan originator with primary responsibility for a transaction changes during the course of the transaction, previously issued loan documents do not have to be reissued merely to change the names and NMLSR IDs on those documents. This clarification is included in comment 36(g)(1)(ii)–1.

36(g)(2)

Proposed § 1026.36(g)(2) identified the documents that must include loan originators' names and NMLSR IDs as the credit application, the disclosure provided under section 5(c) of RESPA, the disclosure provided under TILA section 128, the note or loan contract, the security instrument, and the disclosure provided to comply with section 4 of RESPA. Proposed comment 36(g)(2)–1 clarified that the name and NMLSR ID must be included on any amendment, rider, or addendum to the note or loan contract or security instrument. These clarifications were provided in response to concerns that Small Entity Representatives expressed in the Small Business Review Panel that the statutory reference to ''all loan documents'' would lead to uncertainty as to what is or is not considered a ''loan document.'' The proposed scope of the requirement's coverage was intended to ensure that loan originators' names and NMLSR IDs are included on documents that include the terms or prospective terms of the transaction or borrower information that the loan originator may use to identify loan terms that are potentially available or appropriate for the consumer. To the extent that any document not listed in § 1026.36(g)(2) is arguably a ''loan document,'' the Bureau stated that it was specifying an exhaustive list of loan documents that must include loan originators' names and NMLSR IDs using its authority under TILA section 105(a), which allows the Bureau to make exceptions that are necessary or proper to effectuate the purposes of TILA or to facilitate compliance with TILA.

The proposal explained that this final rule implementing the proposed requirements to include names and NMLSR IDs on loan documents might be issued, and might generally become effective, prior to the effective date of a final rule implementing the Bureau's 2012 TILA–RESPA Integration Proposal. As a result, the requirement to include the name and NMLSR ID would apply to the current RESPA GFE and settlement statement and TILA disclosure until the issuance of the integrated disclosures. The Bureau recognized that such a sequence of events might cause loan originator organizations to have to incur the cost of adjusting their systems and procedures to accommodate the name and NMLSR IDs on the current disclosures even though those disclosures will be replaced in the future by the integrated disclosures. Accordingly, the Bureau solicited public comment on whether the effective date of the provisions regarding inclusion of the NMLSR IDs on the RESPA and TILA disclosures should be delayed until the date that the integrated disclosures are issued.

One commenter opposed what it perceived as a requirement to include the NMLSR ID in the RESPA settlement costs information booklet provided to consumers. Another commenter stated that the NMLSR should be required only on the application, note, and security instrument. One commenter stated that the names and NMLSR IDs should not be required on amendments, riders, or addenda to the note or security instruments because the note and security instrument will already have the names and NMLSR IDs on them. Several commenters urged the Bureau not to require the names and NMLSR IDs on the current RESPA GFE and settlement statement because those forms do not currently have space for the information and will be discontinued soon. For the same reason, several commenters urged the Bureau to delay the effective date of the provision until after the integrated forms and regulations are issued and effective.

The Bureau agrees that the loan originator names and NMLSR IDs should not be required to be included on the current RESPA GFE and HUD–1 (or HUD–1A) forms. The current RESPA GFE form has a designated space for the originator's name but not for the NMLSR ID. The current HUD–1 form (and HUD–1A form) has a designated space for the lender's name, but not for the originator's name and NMLSR ID. While the Bureau has no objection to loan originator names and NMLSR IDs being included on the current forms where not required, the Bureau believes it would be duplicative and unnecessarily expensive for the issuers of these forms to have to revise their systems only to have to revise them again once the Bureau implements its 2012 TILA–RESPA Integration Proposal. For this reason, the Bureau is generally implementing all Title XIV disclosure requirements to take effect at the same time.

Accordingly, the Bureau expects to adopt the requirement to include loan originator names and NMLSR IDs on the integrated disclosures at the same time that the rules implementing the 2012 TILA–RESPA Integration Proposal are adopted. The Bureau is adopting § 1026.36(g)(2) with § 1026.36(g)(2)(ii), reserved in this final rule. The Bureau expects to adopt references to the integrated disclosures in § 1026.36(g)(2)(ii) in the final rule implementing the 2012 TILA–RESPA Integration Proposal. In response to the commenter's concern that the loan originator names and NMLSR IDs should not be required to be included on preprinted booklets, the final rule, like the proposal, does not require inclusion on the booklets. The revisions to § 1026.36(g)(2) described above are expected to prevent any such misinterpretation.

The Bureau disagrees that the loan originator names and NMLSR IDs should be required only on the application, note, and security instrument. To promote accountability of loan originators throughout the course of the transaction, it is important for the names and NMLSR IDs to appear on the integrated loan estimate and closing disclosure as well, because these loan documents include the loan terms offered or negotiated by loan originators. However, as clarified above, the names and NMLSR IDs will not be required to be included on these additional loan documents until the use of those documents becomes mandatory under the Bureau's upcoming final rule on TILA–RESPA Integration.

The Bureau agrees with the commenter that the loan originator names and NMLSR IDs should not be required on amendments, riders, or addenda to the note or security instruments, as such documents will be attached the note or security instrument, which themselves are required to include the names and NMLSR IDs. Accordingly, the Bureau is not adopting proposed comment 36(g)(2)–1. Removal of this requirement is consistent with the Bureau's clarification in comment 36(g)(1)–3 that for any loan document, the names and NMLSR IDs are required to be included only one time, and not on each page.

36(g)(3)

Proposed § 1026.36(g)(3) defined ''NMLSR identification number'' as a number assigned by the NMLSR to facilitate electronic tracking of loan originators and uniform identification of, and public access to, the employment history of, and the publicly adjudicated disciplinary and enforcement actions against, loan originators. The definition is consistent with the definition of ''unique identifier'' in section 1503(12) of the SAFE Act, 12 U.S.C. 5102(12). The Bureau did not receive any public comments on this definition and is adopting it as proposed.

36(h) Prohibition on Mandatory Arbitration Clauses and Waivers of Certain Consumer Rights

Section 1414 of the Dodd-Frank Act added TILA section 129C(e)(1), which prohibits a closed-end consumer credit transaction secured by a dwelling or an extension of open-end consumer credit secured by the consumer's principal dwelling from containing terms that require arbitration or any other non-judicial procedure as the method for resolving disputes arising out of the transaction. TILA section 129C(e)(2) provides that, subject to TILA section 129C(e)(3) a consumer and creditor or any assignee may nonetheless agree, after a dispute arises, to use arbitration or other non-judicial procedure to resolve the dispute. The statute further provides in section 129C(e)(3) that no covered transaction secured by a dwelling, and no related agreement between the consumer and creditor, may be applied or interpreted to bar a consumer from bringing a claim in court in connection with any alleged violation of Federal law.

The Bureau proposed § 1026.36(h) to implement these statutory provisions, pursuant to TILA section 105(a) and section 1022(b) of the Dodd-Frank Act. Proposed § 1026.36(h)(2) would have clarified the interaction between TILA sections 129C(e)(2) and (e)(3), and the section-by-section analysis noted that TILA section 129C(e)(3) and § 1026.36(h)(2) do not address State law causes of action.

Commenters generally supported the proposal. Although some commenters addressed details of the substance of the proposal, many commenters addressed the timing of the provisions' implementation. For example, several consumer groups stated that the proposal did not make any substantive changes to the statutory provisions and should be withdrawn because there was no reason to delay the effective date of the statutory provisions. One commenter acknowledged that the provisions were mandated by the Dodd-Frank Act but urged the Bureau to encourage mandatory arbitration anyway. SBA Advocacy stated that some Small Entity Representatives did not understand why the provisions were being included in this rule and asked the Bureau to consider adopting it at a later date. A bank association commenter urged the Bureau to delay the provisions until after it completed its required general study of arbitration clauses in consumer transactions, pursuant to section 1028 of the Dodd-Frank Act.

One commenter requested clarification on whether the provisions apply to waivers of rights to a jury trial. Other commenters questioned variously whether the proposal altered the statutory provisions: By applying the provision on waivers of causes of action to post-dispute agreements; by applying that provision to loans other than residential mortgage loans and open-end consumer credit plans secured by a principal dwelling; by limiting it to Federal causes of action; or by prohibiting mandatory arbitration clauses in contracts and agreements other than the note and agreements related to the note. One commenter stated that the applicability of the proposed rule provisions was confusing because the provisions refer to consumer transactions secured by a dwelling but their scope is also addressed separately in proposed § 1026.36(j). (Proposed § 1026.36(j) is finalized as § 1026.36(b) of the rule.) Finally, one commenter suggested that the statute and the rule would prohibit nonjudicial foreclosures and prevent a servicer from settling a dispute with a consumer through a settlement agreement.

The provisions on mandatory arbitration and waiver are contained in the Dodd-Frank Act. Absent action by the Bureau, they would take effect on January 21, 2013. The Bureau believes that it is necessary and appropriate to provide implementing language to facilitate compliance with the statute. At the same time, the Bureau recognizes the point made by several commenters regarding the importance of these consumer protections. The fact that the Bureau is implementing the provisions by regulation does not require the Bureau to delay the provisions' effective date for an extended period, as the commenters may have assumed. Instead, the Bureau is providing an effective date of June 1, 2013. The Bureau believes this effective date will give consumers the benefit of these statutory protections within a short timeframe, while also providing industry time to adjust its systems and practices. The Bureau does not believe that industry needs a longer period because the prohibitions on mandatory arbitration agreements and waivers of Federal claims have been known since the Dodd-Frank Act was enacted, and this final rule will not require extensive changes to origination systems. Furthermore, Fannie Mae and Freddie Mac do not accept loans that require arbitration or other nonjudicial procedures to resolve disputes, so the Bureau believes this aspect of the statute and final rule will not necessitate significant changes to current practices in most circumstances. The Bureau is not providing that the provision become effective immediately, however, in order to provide industry a short period to make any needed adjustments.

In response to the comments, the Bureau does not interpret TILA section 129C(e)(3) to limit waivers of rights to a jury trial because bench trials are judicial procedures, not nonjudicial procedures. The Bureau does not interpret TILA section 129C(e)(1) to limit deeds of trust providing for nonjudicial foreclosure because such instruments are not agreements to use nonjudicial procedures to resolve controversies or settle claims arising out of the transaction, in contrast with agreements to use arbitration, mediation, and other forms of alternative dispute resolution. Nor does the Bureau interpret TILA section 129C(e)(3) to limit nonjudicial foreclosures because nonjudicial foreclosures still allow consumers to bring actions in court alleging violations of Federal law.

Similarly, the Bureau does not interpret the statute to bar settlement agreements. Such a result would be a highly unusual—perhaps unprecedented—prohibition, and the Bureau believes that Congress would have spoken expressly about settlement agreements if that was the result it intended.[157] Instead, the Bureau reads the statute to mean that if a consumer and creditor or assignee agree, after a dispute or claim arises, to settle the dispute or claim, the settlement agreement may be applied or interpreted to waive the consumer's right to bring that dispute or claim in court, even if it is a Federal law claim. Accordingly, the Bureau is revising the regulatory text to clarify that § 1026.36(h) does not limit a consumer and creditor or any assignee from agreeing, after a dispute or claim under the transaction arises, to settle that dispute or claim. Under TILA section 129C(e)(3) and § 1026.36(h)(2), however, no settlement agreement may be applied or interpreted to bar the consumer from bringing an action in court for any other alleged violation of Federal law.

The Bureau is further revising the regulatory text to address the belief of some commenters that the Bureau had altered the scope of the statutory provision. As discussed above, TILA section 129C(e)(2) provides that the exception for post-dispute agreements from the prohibition on mandatory arbitration agreements is itself subject to the prohibition on waivers of rights to bring Federal causes of action in court. The proposal specified that a post-dispute agreement to use arbitration or other nonjudicial procedure could not limit the ability of the consumer to bring a covered claim through the agreed-upon procedure. This final rule clarifies that, consistent with the discussion of waivers of causes of action in settlement

[157] *See, e.g., Robinson* v. *Shelby Cnty. Bd. of Educ.*, 566 F.3d 642, 648 (6th Cir. 2009) (''[I]t is also well-established that '[p]ublic policy strongly favors settlement of disputes without litigation. * * * Settlement agreements should therefore be upheld whenever equitable and policy considerations so permit.''').

agreements above, the Bureau interprets the statute to mean that if a consumer and creditor or assignee agree, after a dispute or claim arises, to use arbitration or other nonjudicial procedure to resolve that dispute or claim, the agreement may be applied or interpreted to waive the consumer's right to bring *that* dispute or claim in court, even if it is a Federal law claim. The Bureau believes that, in such an instance, the consumer is aware of the specific dispute or claim at issue and is therefore in a better position to make a knowing decision whether to resolve the dispute or claim without bringing an action in court. But no post-dispute agreement to use arbitration or other nonjudicial procedure may be applied or interpreted to bar the consumer from bringing an action in court for any other alleged violation of Federal law.

The Bureau disagrees with commenters who stated it had expanded the scope of TILA section 129C(e) to cover open-end consumer credit plans other than those secured by the principal dwelling of the consumer. Proposed § 1026.36(j) (implemented in this final rule as § 1026.36(b)) clarifies the scope of each of the other substantive paragraphs in § 1026.36 and provides that the only open-end consumer credit plans to which § 1026.36(h) applies are those secured by the principal dwelling of the consumer. However, to reduce uncertainty, the Bureau is including a statement in § 1026.36(h) that it is applicable to ''a home equity line of credit secured by the consumer's principal dwelling.''

The Bureau also disagrees that the proposed language changed the scope of the prohibition on waivers of causes of action by including the word ''Federal'' in the paragraph (h)(2) heading, ''No waivers of Federal statutory causes of action.'' The contents of paragraph (h)(2) and the corresponding statutory paragraph (e)(3) both provide that the prohibition applies to alleged violations of Section 129C of TILA, any other provision of TILA, or any other Federal law. Thus, the scope of the statutory prohibition is limited to Federal law, and the implementing regulation is properly so limited.

Finally, the Bureau disagrees that the prohibition on agreements to use mandatory arbitration applies only to the note itself. TILA section 129C(e)(1) provides that it applies to the terms of a residential mortgage loan and to an extension of credit under an open-end consumer credit plan secured by the principal dwelling of the consumer. The terms of such transactions are frequently memorialized in multiple documents. Plainly, the prohibition cannot be evaded simply by including a provision for mandatory arbitration in a document other than the note if that document is executed as part of the transaction. The prohibition applies to the terms of the whole transaction, regardless of which particular document contains those terms. However, to prevent any misunderstanding that the prohibition applies to agreements that are not part of the credit transaction, the Bureau is replacing the phrase ''contract or agreement in connection with a'' consumer credit transaction with the phrase ''contract or other agreement for'' a consumer credit transaction.

36(i) Prohibition on Financing Single-Premium Credit Insurance

Dodd-Frank Act section 1414 added TILA section 129C(d), which generally prohibits a creditor from financing any premiums or fees for credit insurance in connection with a closed-end consumer credit transaction secured by a dwelling or an extension of open-end consumer credit secured by the consumer's principal dwelling. The prohibition applies to credit life, credit disability, credit unemployment, credit property insurance, and other similar products. The same provision states, however, that the prohibition does not apply to credit insurance for which premiums or fees are calculated and paid in full on a monthly basis or to credit unemployment insurance for which the premiums are reasonable, the creditor receives no compensation, and the premiums are paid pursuant to a separate insurance contract and are not paid to the creditor's affiliate.

Proposed § 1026.36(i) would have implemented these statutory provisions. The authority to implement these statutory provisions by rule is TILA section 105(a) and section 1022(b) of the Dodd-Frank Act. Rather than repeating Dodd-Frank Act section 1414's list of covered credit insurance products, the proposed language cross-referenced the existing description of insurance products in § 1026.4(d)(1) and (3). The Bureau explained that the proposal was not intended to make any substantive change to the statutory provision's scope of coverage. The proposal stated the Bureau's belief that these provisions are sufficiently straightforward that they require no further clarification. The Bureau requested comment, however, on whether any issues raised by the provision require clarification and, if so, how they should be clarified. The Bureau also solicited comment on when the provision should become effective, for example, 30 days following publication of the final rule, or at a later time.

Commenters generally supported the proposed provision. Two commenters asked the Bureau to permit financing of credit insurance when doing so would be beneficial to a consumer. SBA Advocacy stated that some Small Entity Representatives did not understand why the provision was being included and asked the Bureau to consider adopting it at a later date.

Several consumer groups stated that the proposal did not make any substantive changes to the statutory provision and stated that there is no reason to delay the effective date of the statutory provision. The same commenters asked the Bureau to clarify that a creditor cannot evade the prohibition by charging a fixed monthly payment that does not decrease as the principal is paid off or by adding the monthly charge to the loan balance. The commenters stated that the cross-reference to credit insurance products described elsewhere in Regulation Z could be read to narrow the scope of the prohibition and asked the Bureau to clarify what a ''reasonable'' credit unemployment insurance premium is.

A credit union sought clarification that the prohibition does not apply to mortgage insurance premiums. Finally, one commenter requested that the effective date of the prohibition be delayed for six months so that software programmers could program appropriate warnings and blockages in their loan originating systems.

The prohibition of financing of credit insurance is required by the Dodd-Frank Act. Absent action by the Bureau, they would take effect on January 21, 2013. The Bureau agrees with the commenters who stated that the provision is an important consumer protection that should not be delayed without good reason. The fact that the Bureau is implementing the provision by regulation does not require it to delay the provision's effective date for a long period, as the commenters may have assumed. Instead, the Bureau is providing an effective date of June 1, 2013. The Bureau believes this effective date will give consumers the benefit of this important protection within a short timeframe, while also providing industry time to adjust its systems and practices. The Bureau does not believe that industry needs a longer period of time because the prohibition, which is not substantially changed by this final rule, has been known since the Dodd-Frank Act was enacted and the codified regulation will not require extensive calibration of origination systems. Furthermore, Freddie Mac and Fannie

Mae have prohibited the same practice for years.[158] The Bureau is not providing that the provision become effective immediately, however, because industry may need to make some adjustments based on the clarifications made in this final rule.

The Bureau is adopting the consumer groups' suggestion to incorporate the full list of covered insurance products from TILA section 129C(d) to prevent any perception that the Bureau did not intend for the regulatory provision to cover all of those insurance products. As revised, the final rule provides that the listed types of insurance are what insurance ''means,'' not just what it ''includes,'' because the list provided in the statute seems to be exclusive. The Bureau declines to define at this time what insurance premiums are ''reasonable'' for purposes of the exception for certain credit unemployment insurance products because the Bureau does not currently have sufficient data and other information to make this judgment for a rule of general applicability.

With regard to the requests for clarification that a creditor cannot evade the prohibition by charging a fixed monthly payment that does not decrease as the principal is paid off or by adding the monthly charge to the loan balance, the Bureau believes that the two practices identified would directly violate the prohibition. Adding a monthly charge for the insurance to the loan balance would amount to financing the premiums for credit insurance rather than paying them in full on a monthly basis. Similarly, charging a fixed monthly charge for the credit insurance that does not decline as the loan balance declines would fail to meet the requirement for the premium to be ''calculated * * * on a monthly basis.'' As a result, this practice would fail to satisfy the conditions for the exclusion from what constitutes ''financ[ing], directly or indirectly'' credit insurance premiums.

The Bureau agrees with the commenter that the provision does not apply to mortgage insurance. Mortgage insurance is not listed in TILA section 129C(d). Credit insurance generally insures a consumer in the event of a specified event, and the benefit provided is to make the consumer's periodic payments while the consumer is unable to make them. Mortgage insurance is distinguishable in that it insures a creditor (or its assignee) against loss in the event of default by the consumer or in other specified events.

36(j) Depository Institution Compliance Procedures

Dodd-Frank Act section 1402(a)(2) added TILA section 129B(b)(2), which provides that the Bureau ''shall prescribe regulations requiring depository institutions to establish and maintain procedures reasonably designed to assure and monitor the compliance of such depository institutions, and subsidiaries of such institutions, and the employees of such institutions or subsidiaries with the requirements of this section and the registration procedures established under section 1507 of the [SAFE Act].'' 15 U.S.C. 1639b(b)(2). The Bureau notes that one week after the Dodd-Frank Act was signed into law, the Federal prudential regulatory agencies for banks, thrifts, and credit unions jointly issued a final rule requiring the institutions they regulate, among other things, to adopt and follow written policies and procedures designed to assure compliance with the registration requirements of the SAFE Act. That final rule was inherited by the Bureau and is designated as Regulation G. The Bureau believes that Regulation G largely satisfies the provision under TILA section 129B(b)(2) for regulations requiring compliance policies and procedures, with regard to mortgage originator qualification requirements. TILA section 129B(b)(2) also requires the Bureau to prescribe regulations requiring depository institutions to establish and maintain procedures reasonable designed to assure and monitor compliance with all of TILA section 129B.

The proposal did not contain specific regulatory language to implement TILA section 129B(b)(2), but the Bureau stated that it might adopt such language in this final rule. Accordingly, it described the language it was considering in detail and solicited comment on the described text.

Specifically, the proposal stated the Bureau's expectation that such a rule would require depository institutions to establish and maintain procedures reasonably designed to ensure and monitor the compliance of themselves, their subsidiaries, and the employees of both with the requirements of § 1026.36(d), (e), (f), and (g). The Bureau stated that the rule would provide further that the required procedures must be appropriate to the nature, size, complexity, and scope of the mortgage credit activities of the depository institution and its subsidiaries. The Bureau solicited public comment on whether it should define ''depository institution'' using the FDIA's definition (which does not include credit unions), the SAFE Act's definition (which includes credit unions), or some other definition.

The Bureau further noted that under Regulation G only certain subsidiaries (those that are ''covered financial institutions'') are required by 12 CFR 1007.104 to adopt and follow written policies and procedures designed to assure compliance with Regulation G. Accordingly, the proposal noted that it may be appropriate to apply the duty to ensure and monitor compliance of subsidiaries and their employees under TILA section 129B(b)(2) only to subsidiaries that are covered financial institutions under Regulation G. Exercising TILA section 105(a) authority to make an adjustment or exception in this way may facilitate compliance by aligning the scope of the subsidiaries covered by the TILA and SAFE Act requirements.

Finally, the proposal questioned whether extending the scope of a regulation requiring procedures even further, to apply to other loan originators that are not covered financial institutions under Regulation G (such as independent mortgage companies), would help ensure consistent consumer protections and more equal compliance responsibilities among types of creditor. The Bureau discussed whether exercising TILA section 105(a) authority in this way is necessary or proper to effectuate the purpose stated in TILA section 129B(a)(2) of ensuring that consumers are offered and receive residential mortgage loans that are not unfair, deceptive, or abusive.

The Bureau therefore solicited comment on whether a regulation requiring procedures to comply with TILA section 129B should apply only to depository institutions as defined in section 3 of the FDIA, or also to credit unions, other covered financial institutions subject to Regulation G, or any other loan originators such as independent mortgage companies. Additionally, the Bureau solicited comment on whether it should apply the duty to ensure and monitor compliance of subsidiaries and their employees only with respect to subsidiaries that are covered financial institutions under Regulation G. With respect to all of the foregoing, the Bureau also solicited comment on whether any of the potential exercises of TILA section 105(a) authority should apply with respect to procedures concerning only SAFE Act registration, or with respect to procedures for all the

[158] *See, e.g.,* 2000 Freddie Mac policy, at *http://www.freddiemac.com/sell/guide/bulletins/pdf/421indltr.pdf* and 2004 Fannie Mae policy, *https://www.fanniemae.com/content/announcement/04-05.pdf*.

duty of care requirements (*i.e.,* the qualifications and loan document provisions) in TILA section 129B(b)(1), or with respect to procedures for all the requirements of TILA section 129B, including the compensation and steering provisions and those added by section 1402 of the Dodd-Frank Act.

The Bureau also recognized that a depository institution's failure to establish and maintain the required procedures under the implementing regulation would constitute a violation of TILA, thus potentially resulting in significant civil liability risk to depository institutions under TILA section 130. *See* 15 U.S.C. 1640. The Bureau anticipated concerns on the part of depository institutions regarding their ability to avoid such liability risk and therefore sought comment on the appropriateness of establishing a safe harbor that would demonstrate compliance with the rule requiring procedures. It stated that such a safe harbor might provide that a depository institution is presumed to have met the requirement for procedures if it, its subsidiaries, and the employees of it and its subsidiaries do not engage in a pattern or practice of violating § 1026.36(d), (e), (f), or (g).

The Bureau did not receive any public comments on the contemplated provision requiring compliance procedures. The Bureau is adopting the contemplated provision to implement TILA section 129B(b)(2) in § 1026.36(j), which requires compliance policies and procedures corresponding only to the substantive requirements of TILA section 129B implemented through this final rule, namely those in § 1026.36(d), (e), (f), and (g). The adopted provision clarifies that the required procedures must be ''written'' to promote transparency, consistency, and accountability. The Bureau is adopting, for purposes of § 1026.36(j), the definition of ''depository institution'' in the SAFE Act, which includes credit unions, because the substantive provisions in § 1026.36(d), (e), (f), and (g) apply to credit unions. The Bureau notes that provisions implicating the contents of the written procedures that a depository institution establishes and maintains pursuant to § 1026.36(j) are included in § 1026.36(f)(3)(ii)(B)*(3)* and comment 36(g)(1)(ii)–1.

VI. Effective Date

The amendments to § 1026.36(h) and (i) of this final rule are effective on June 1, 2013. The rule applies to transactions for which the creditor received an application on or after that date. All other provisions of the rule are effective on January 10, 2014. As discussed above in part III.G, the Bureau believes that this approach is consistent with the timeframes established in section 1400(c) of the Dodd-Frank Act and, on balance, will facilitate the implementation of the rules' overlapping provisions, while also affording creditors sufficient time to implement the more complex or resource-intensive new requirements.

In the proposal, the Bureau recognized that this rulemaking addresses issues important for consumer protection and thus should be implemented as soon as practical. The Bureau also recognized, however, that creditors and loan originators will need time to make systems changes, establish appropriate policies and procedures, and retrain their staff to address the Dodd-Frank Act provisions and other requirements implemented through this rulemaking. The Bureau stated that ensuring that industry has sufficient time to properly implement the necessary changes will inure to the benefit of consumer through better industry compliance, and solicited comment on an appropriate implementation period for the final rule in light of these competing considerations.

In response to the proposal, the Bureau received approximately 20 comments from industry participants with respect to the appropriate effective date for the requirements in the proposed rule. The majority of commenters, including large and small banks, credit unions, non-depository creditors, and State and national trade associations, requested that the Bureau provide the industry with ample time to implement the requirements of the final rule, but did not suggest a specific effective date or timeframe. For example, one State trade association representing banks and a mortgage company did not propose a specific effective date, but urged the Bureau to carefully consider the challenges involved with implementing such massive changes and to make every effort to avoid significant adverse impact on consumers, creditor, and the economy as a whole. Two commenters also noted that their software vendors were concerned about their ability to meet potential effective dates. A State trade association representing credit unions expressed concern about the number of changes required by the rule and suggested that the Bureau delay the effective date until all of the related proposals have been finalized. Further, another trade association representing credit unions stated that, if credit unions were not exempt from the new regulations, the Bureau should apply maximum flexibility in determining the implementation and effective dates of the final rule.

For commenters requesting a specific date for implementation, the time periods suggested ranged from 12 to 36 months. One large and one small credit union indicated that the Bureau should establish an implementation period of 18 months, while a leading industry trade association and a large bank advocated for an effective date of 18 to 24 months and 24 months, respectively. Further, one trade association representing manufactured housing providers requested that the Bureau use its authority to extend the effective date to the greatest extent possible and suggested an implementation date of up to 36 or 48 months after issuance of the rule. Each of the commenters generally stated that the requested time was necessary to effectively implement the regulations because of the complexity of the proposed rules, the impact on systems changes and staff training, and the cumulative impact of the proposed loan originator compensation rules when combined with other requirements imposed by the Dodd-Frank Act or proposed by the Bureau. One major trade association referred to the complexity faced by HUD in implementing the RESPA reform rules from 2009 to 2011 and urged the Bureau to provide industry with an opportunity to review the rule and have uncertainties and ambiguities addressed before the implementation period begins. Similarly, another bank recommended that the Bureau establish an internal group to respond to industry questions and concerns regarding implementation.

The Bureau received three comments specifically regarding the effective date for § 1026.36(g), which requires the loan originator's name and NMLSR ID on all loan documents. One trade association requested that the Bureau delay the effective date for including the NMLSR IDs on forms until the rule implementing the TILA–RESPA integrated disclosure forms takes effect. The commenter urged that a delayed effective date would eliminate unnecessary costs for creditor to update the technology related to disclosures for this rule and then again once the new integrated disclosures are finalized. A large bank stated that the new NMLSR ID requirement, if adopted, should become effective no sooner than January 2014 to provide industry with enough time to make document forms and system changes. The bank commenter also recommended that a 12-month implementation period may not be adequate if banks do not timely receive updated note and security interest forms supplied by the Government Sponsored Enterprises (''GSEs'') and federal agencies. One information services company did not propose a timeframe, but sought clarification of the effective date to ensure consistency across the industry.

Additionally, the Bureau received two comments from consumer groups specifically regarding the effective date of the ban on mandatory arbitration clauses in § 1026.36(h) and certain financing practices for single-premium credit insurance in § 1026.36(i). One of the consumer groups stated that the proposed regulation adds little to the statutory requirements and, thus, should take effect no later than January 21, 2013. The other consumer group did not propose a specific implementation date, but stated generally that the ban on mandatory arbitration clauses in section 1414 of the Dodd-Frank Act should be implemented immediately.

For the reasons already discussed above, the Bureau believes that an effective date of January 10, 2014 for most of the other title XIV final rules and all provisions of this final rule except § 1026.36(h) regarding mandatory arbitration and waivers of federal claims and § 1026.36(i) regarding certain financing practices for single-premium credit insurance will ensure that consumers receive the protections in these rules as soon as reasonably practicable. These effective dates take into account the timeframes established by the Dodd-Frank Act, the need for a coordinated approach to facilitate implementation of the rules' overlapping provisions, and the need to afford loan originators, creditors and other affected entities sufficient time to implement the more complex or resource-intensive new requirements. Accordingly, except for § 1026.36(h) and (i), the effective date for implementation of the regulations adopted in this notice is January 10, 2014. This time period is consistent with: (1) The request for the majority of comments for an ample amount of time to implement the requirements: (2) outreach conducted by the Bureau with vendors and systems providers regarding timeframes for updating core systems: and (3) the implementation period for other requirements imposed by the Dodd-Frank Act or regulations issued by the Bureau that may have a cumulative impact on loan originators and creditors. Although some commenters requested a longer time period to come into compliance with this rule, the Bureau believes that the implementation period adopted appropriately balances the need of industry to have a sufficient amount of time to bring their systems and practices into compliance with the goal of providing consumers the benefits of these new protections as soon as practical.

With respect to the Dodd-Frank Act's ban on mandatory arbitration clauses, waivers of Federal claims, and certain financing practices for single-premium credit insurance, the Bureau agrees with commenters that these requirements should be implemented without further delay. Accordingly, the requirements banning mandatory arbitration clauses, waivers of Federal claims, and certain financing practices for single-premium credit insurance in § 1026.36(h) and (i) take effect June 1, 2013. Thus, compliance with these provisions of this final rule will be mandatory nearly eight months earlier than the January 21, 2014 baseline mandatory compliance date that the Bureau is adopting for the other parts of this final rule and most of the Title XIV Rulemakings, as discussed above in part III.G. As that discussion notes, the Bureau is carefully coordinating the implementation of the Title XIV Rulemakings, including their mandatory compliance dates. The Bureau is including § 1026.36(h) and (i) of this final rule, however, among a subset of the new requirements of the Title XIV Rulemakings that will have earlier effective dates because the Bureau believes that they do not present significant implementation burdens for industry.

VII. Dodd-Frank Act Section 1022(b)(2)

In developing the final rule, the Bureau has considered potential benefits, costs, and impacts.[159] The proposed rule set forth a preliminary analysis of these effects, and the Bureau requested and received comments on this analysis. In addition, the Bureau has consulted or offered to consult with the prudential regulators, HUD, the FHFA, and the Federal Trade Commission, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

In this rulemaking, the Bureau amends Regulation Z to implement amendments to TILA made by the Dodd-Frank Act. The amendments to Regulation Z implement certain provisions in Dodd-Frank Act sections 1402 (new duties of mortgage originators concerning proper qualification, registration, and related requirements), 1403 (limitations on loan originator compensation to reduce steering incentives for residential mortgage loans), and 1414(a) (restrictions on the financing of single-premium credit insurance products and mandatory arbitration agreements and waivers of Federal claims in residential mortgage loan transactions). The final rule also provides clarification of certain provisions in the 2010 Loan Originator Final Rule, including the application of those provisions to certain profit-based compensation plans and the appropriate analysis of other payments made to loan originators.

The Board and Congress acted in 2010, as discussed in Part II above, to address concerns that certain methods of compensating loan originators could create potential moral hazard in the residential mortgage market, creating incentives for originators to persuade consumers to agree to loan terms, such as higher interest rates, that are more profitable to originators but detrimental to consumers. The final rule will continue the protections provided in the 2010 Loan Originator Final Rule while implementing additional provisions Congress included in the Dodd-Frank Act that, as discussed previously, improve the transparency of mortgage loan originations, preserve consumer choice and access to credit, and enhance the ability of consumers to accurately interpret and select among the alternative loan terms available to them.

A. Provisions To Be Analyzed

The analysis below considers the benefits, costs, and impacts of the following major provisions:

1. A complete exemption, pursuant to Dodd-Frank Act section 1403 and other authority, from the statutory prohibition in section 1403 on consumers paying upfront points and fees in all loan transactions where a loan originator receives compensation from someone other than a consumer for that particular transaction.

2. Clarification of the applicability of the prohibition on payment and receipt of loan originator compensation based on transaction terms to compensation by creditors or loan originator organizations through designated tax-advantaged plans in which individual loan originators participate and to payment of non-deferred profits-based compensation.

3. New requirements for loan originators, including requirements related to their licensing, registration, and qualifications, and a requirement to

[159] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

include their identification numbers and names on loan documents.

The prohibition of mandatory arbitration clauses and waivers of Federal claims in residential mortgage contracts and restrictions on the financing of single-premium credit insurance are also discussed.

The analysis considers the benefits and costs to consumers and covered persons from each of these provisions. The analysis also addresses comments the Bureau received on the proposed 1022(b)(2) analysis as well as certain other comments on the benefits or costs of provisions of the proposed rule when doing so is helpful to understanding the section 1022(b)(2) analysis. Comments that mention the benefits or costs of a provision of the rule in the context of commenting on the merits of that provision are addressed in the section-by-section analysis for that provision. The analysis also addresses the benefits, costs, and impacts of certain alternative provisions that were considered by the Bureau in the development of the final rule, including in response to comments. Broader and more detailed discussions of these alternative provisions, including the requirement to make available to the consumer an alternative loan that would not include discount points, origination points, or origination fees and the use of a revenue test to determine circumstances under which loan originators may receive certain compensation on the basis of profits from mortgage origination activities, can also be found in the section-by-section analysis above.

As noted, section 1022 of the Dodd-Frank Act requires that the Bureau, in adopting the rule, consider potential benefits and costs to consumers and covered persons resulting from the rule, including the potential reduction of access by consumers to consumer financial products or services resulting from the rule, as noted above; it also requires the Bureau to consider the impact of proposed rules on covered persons and the impact on consumers in rural areas. These potential benefits and costs, and these impacts, however, are not generally susceptible to particularized or definitive calculation in connection with this rule. The incidence and scope of such potential benefits and costs, and such impacts, will be influenced very substantially by economic cycles, market developments, and business and consumer choices that are substantially independent from adoption of the rule. No commenter has advanced data or methodology that it claims would enable precise calculation of these benefits, costs, or impacts. Moreover, the potential benefits of the rule on consumers and covered persons in creating market changes anticipated to address market failures are especially hard to quantify.

In considering the relevant potential benefits, costs, and impacts, the Bureau has utilized the available data discussed in this preamble, where the Bureau has found it informative, and applied its knowledge and expertise concerning consumer financial markets, potential business and consumer choices, and economic analyses that it regards as most reliable and helpful, to consider the relevant potential benefits and costs, and relevant impacts. The data relied upon by the Bureau includes the public comment record established by the proposed rule.[160] However, the Bureau notes that for some aspects of this analysis, there are limited data available with which to quantify the potential costs, benefits, and impacts of the final rule. The absence of public data regarding the specific distribution of loan products offered to consumers, for example, eliminates the ability to estimate precisely any empirical benefits from increased consumer choice.

In light of these data limitations, the analysis below generally provides a qualitative discussion of the benefits, costs, and impacts of the final rule. General economic principles, together with the limited data that are available, provide insight into these benefits, costs, and impacts. Where possible, the Bureau has made quantitative estimates based on these principles and the data that are available. For the reasons stated in this preamble, the Bureau considers that the rule as adopted faithfully implements the purposes and objectives of Congress in the statute. Based on each and all of these considerations, the Bureau has concluded that the rule is appropriate as an implementation of the Act.

[160] The Bureau noted in the mortgage proposals issued in summer 2012 that it sought to obtain additional data to supplement its consideration of the rulemakings, including additional data from the National Mortgage License System (NMLS) and the NMLS Mortgage Call Report, loan file extracts from various lenders, and data from the pilot phases of the National Mortgage Database. Each of these data sources was not necessarily relevant to each of the rulemakings. The Bureau used the additional data from NMLS and NMLS Mortgage Call Report data to better corroborate its estimate of the contours of the non-depository segment of the mortgage market. The Bureau has received loan file extracts from three lenders, but at this point, the data from one lender is not usable and the data from the other two is not sufficiently standardized nor representative to inform consideration of the final rules. Additionally, the Bureau has thus far not yet received data from the National Mortgage Database pilot phases. The Bureau also requested that commenters submit relevant data. All probative data submitted by commenters are discussed in this document.

B. Baseline for Analysis

The amendments to TILA in sections 1403 and 1414(a) of the Dodd-Frank Act would have taken effect automatically on January 21, 2013, in the absence of these final rules implementing those requirements.[161] Specifically, new TILA section 129B(c)(2), which was added by section 1403 of the Dodd-Frank Act and restricts the ability of a creditor, the mortgage originator, or any affiliate of either to collect from the consumer upfront discount points, origination points, or origination fees in a transaction in which the mortgage originator receives from a person other than the consumer an origination fee or charge, would have taken effect automatically unless the Bureau exercised its authority to waive or create exemptions from this prohibition. New TILA section 129B(b)(1) requires each mortgage originator to be qualified and include unique identification numbers on loan documents. TILA section 129B(c)(1) prohibits mortgage originators in residential mortgage loans from receiving compensation that varies based on loan terms. TILA section 129C(d) creates prohibitions on single-premium credit insurance, and TILA section 129C(e) provides restrictions on mandatory arbitration agreements and waivers of Federal claims. These statutory amendments to TILA also would have taken effect automatically in the absence of the Bureau's instant regulation.

In some instances, this final rule provides exemptions to certain statutory provisions. These exemptions are made to enhance the benefits received by consumers relative to allowing the TILA amendments to take effect automatically. In particular, the Dodd-Frank Act prohibits consumer payment of upfront discount points, origination points, and origination fees in all residential mortgage transactions where someone other than the consumer pays a loan originator compensation tied to the transaction (*e.g.,* a commission). Pursuant to its authority under section 1403 of the Dodd-Frank Act to create exemptions from this prohibition when doing so would be in the interest of consumers and in the public interest, and other authority, the Bureau's final rule does not prohibit the use of upfront points and fees. In exercising its exemption authority, the Bureau maintains the current degree of choice available to consumers and the current

[161] Sections 129B(b)(2) and 129B(c)(3) of TILA, as added by sections 1402 and 1403 of the Dodd-Frank Act, however, do not impose requirements on mortgage originators until Bureau implementing regulations take effect.

methods by which creditors can hedge prepayment risk inherent in mortgage loans.

Thus, many costs and benefits of the provisions of the final rule arise largely or entirely from the statute, and not from the final rule. The final rule would provide substantial benefits compared to allowing these provisions to take effect by clarifying parts of the statute that are ambiguous. Greater clarity on these issues should reduce the compliance burdens on covered persons by reducing costs for attorneys and compliance officers as well as potential costs of over-compliance and unnecessary litigation. In addition, the final rule would provide substantial benefits by granting the exemptions to the statute described above that will benefit consumers and avoid disruption to the mortgage industry. Section 1022 of the Dodd-Frank Act permits the Bureau to consider the benefits and costs of the rule solely compared to the state of the world in which the statute takes effect without an implementing regulation. To provide the public better information about the benefits and costs of the statute, however, the Bureau has nonetheless chosen to evaluate the benefits, costs, and impacts of the major provisions of the final rule against a pre-statutory baseline. That is, the Bureau's analysis below considers the benefits, costs, and impacts of the relevant provisions of the Dodd-Frank Act combined with the final rule implementing those provisions relative to the regulatory regime that pre-dates the Act and remains in effect until the final rule takes effect. The one exception is the analysis of the Bureau's adoption in the final rule of a complete exemption to the statutory ban on upfront points and fees. Evaluating this provision relative to a pre-statutory baseline would be an empty exercise, as the exemption preserves the pre-statute status-quo.

C. Coverage of the Final Rule

The final rule applies to loan originators, as that term is defined in § 1036.36(a)(1)(i). The new qualification and document identification requirements also apply to creditors that finance transactions from their own resources and meet the definition of a loan originator. The required compliance procedures only apply to depository institutions. Like existing § 1026.36(d) and (e), the new qualification, document identification, and compliance procedure requirements apply to closed-end consumer credit transactions secured by a dwelling (as opposed to the consumer's principal dwelling). The new arbitration, waiver, and single-premium credit insurance provisions apply to both closed-end consumer credit transactions secured by a dwelling and HELOCs subject to § 1026.40 and secured by the consumer's principal dwelling.

D. Potential Benefits and Costs of the Final Rule to Consumers and Covered Persons

1. Full Exemption of Discount Points and Origination Points or Fees

The Dodd-Frank Act prohibits consumer payment of upfront points and fees in all residential mortgage loan transactions, except those where a loan originator does not receive compensation that is tied to the specific transaction (*e.g.,* a commission) from someone other than a consumer.

Pursuant to its authority under section 1403 of the Dodd-Frank Act to create exemptions from this prohibition when doing so would be in the interest of consumers and in the public interest, the Bureau earlier proposed to provide that a creditor or loan originator organization may charge a consumer discount points or fees when someone other than the consumer pays a loan originator transaction-specific compensation, but only if the creditor also makes available to the consumer a comparable, alternative loan that excludes discount points, origination points, or origination fees. The proposal to require the creditor to satisfy this prerequisite was termed the ''zero-zero alternative.''

The Bureau chooses, at this time, to adopt a complete exemption to the statutory ban on upfront points and fees in the final rule, rather than the proposed zero-zero alternative. The Bureau believes that providing a complete exemption at this time, while preserving its ability to revisit the scope of the exemption in the future, will benefit consumers and the public interest by maintaining access to credit and the range of alternative mortgage products available to consumers at this time, and by avoiding any unanticipated effects on the nascent recovery of domestic mortgage and housing markets.

The Bureau strongly believes, however, that while an exemption from the statutory restrictions on points and fees is, at this time and under the current state of knowledge of the mortgage market, in the consumer and the public interests, future research could indicate that amending the existing regulations regarding points and fees would benefit consumers and the public. The Bureau intends to conduct research into this issue over the next five years. This five-year timeframe corresponds to the Bureau's responsibility to conduct a five-year review of the rule as required by the Dodd-Frank Act. Based on its research findings, the Bureau would, as part of this review, assess consumer and public welfare under a complete exemption of the statutory prohibition on points and fees. This five-year review period will allow the Bureau, as part of its research on points and fees, to assess effects on the mortgage market arising from the new disclosures to be issued by the Bureau when the 2012 TILA–RESPA Integration Proposal is finalized, the 2013 ATR Final Rule, the 2013 HOEPA Final Rule, and other relevant Title XIV rulemakings. The Bureau notes that these Title XIV rulemakings are likely to have a significant impact on how points and fees are structured in the mortgage market. If the Bureau determines over this period that additional requirements are needed, the Bureau would issue a new proposal for public notice and comment.

Potential Benefits and Costs to Consumers

In any mortgage transaction, the consumer has the option to prepay the loan and exit the existing contract. This option to repay has some inherent value to the consumer and imposes a cost on the creditor.[162] In particular, consumers usually pay for part of this option through one of three alternative means: (1) ''Discount points,'' which are the current payment of the value of future interest; (2) a ''prepayment penalty,'' which is a payment of the same market value deferred until the time at which the loan balance is actually repaid; or (3) a higher coupon rate on the loan.

In many instances, creditors or loan originators will charge consumers an origination point or fee. When many loan originator organizations serve a mortgage market, competition between them drives these upfront payments to a level just sufficient to cover the cover the labor and material costs the organization incurs from processing the loan and these payments do not represent a source of economic profit for that loan originator organization. Here too, the loan originator could offer the

[162] Consumers who expect to pay the balance of their loan prior to maturity can purchase from creditors the sole right to choose the date of this payoff. This right is valuable and its price is the market value such a sale creates for creditors in regard to the date of this potential payoff. Creditors exchange rights with consumers but in the opposite direction with ''callable'' bonds. This type of bond exhibits an exactly opposite trade, in which the borrower cedes to the creditor the choice of time at which the creditor can require, if it chooses, the borrower to remit the remaining value of the bond.

consumer a loan with a higher interest rate in order to recover the creditor's costs. In this sense, discount points and origination points or fees are similar; from the consumer's perspective, they are various upfront charges the consumer may pay where the possibility may exist to trade some or all of this payment in exchange for a higher interest rate.

By permitting discount points under certain circumstances, the Bureau's final rule offers consumers greater choice over the terms of the coupon payments on their loans and a choice between paying discount points or a higher rate for the purchase of the prepayment option embedded in their loans.[163] In theory consumers make this choice, at least in part, based on how long they will stay in the particular loan. This, in turn, will depend primarily on how long they expect to stay in the property and their beliefs about future conditions in the mortgage market. At the time of origination, however, consumers necessarily have some uncertainty about future events; the actual outcome of such events could induce these consumers to pay off their loan after a shorter period than planned. Consequently, the benefits the consumer actually obtains at the termination of the loan may be less than those the consumer expected at the time of origination and could even result in the consumer suffering a realized loss.[164]

Greater choice over the terms of transactions and greater choice over how to pay for the prepayment option should, under all but rare circumstances, increase the ex ante welfare of consumers.[165] The degree to which individual consumers ultimately benefit after origination will depend on their individual circumstances and their relative degree of financial acuity.[166]

Relative to permitting the statutory provision to go into effect unaltered, the Bureau's exemption also provides the potential for an additional benefit to consumers when adverse selection in the mortgage market compounds the costs of uncertainty over early repayment. Consumers' purchase of discount points signals to creditors that the expected maturity of their loans is longer than those loans taken out by consumers who do not purchase discount points. This results in the consumer being offered a rate below the rate that would be offered if the rate-point trade-off did not incorporate the signal about the likely length of time that consumers paying points will hold the loan. Creditors respond by offering a lower average rate on each class of mortgages over which creditors have discretion in pricing.[167]

Potential Benefits and Costs to Covered Persons

Relative to implementation of the general statutory prohibition on points and fees without exercise of Bureau's exception authority, the ability to trade a lower loan rate to consumers in exchange for the upfront payment of discount points and origination points or fees is of significant benefit to all creditors participating in loan origination. When purchasing a mortgage, consumers also receive an option to prepay their mortgage balance at a time only they choose. While this ''prepayment'' option is valuable to consumers, it is also a source of risk to creditors, which lose future interest rate payments should the consumer prepay the consumer's loan prior to the loan's maturity. The potential for a mutually beneficial exchange of lower rates for current payment of points and fees allows a creditor to recoup a portion of the (market) value of this option, which is equivalent to the creditor's cost of bearing prepayment risk. This is a primary means by which a creditor can hedge the risk posed by fixed-rate mortgages, whether held or sold, to its portfolio and the value of its business.[168]

A related benefit for creditors arises from the presence of adverse selection among consumers in the mortgage market, which compounds the risks borne from early repayment. Allowing consumers to purchase discount points allows them to signal to creditors that they expect to make payments on their loans for a longer period than other consumers who choose not to purchase such points. Creditors gain from that information and will respond to such differences in behavior.[169] Increasing a creditor's ability to measure more precisely the prepayment risk and credit risk posed by an individual consumer allows it to more precisely adjust the prices or loans to correspond to the particular risk presented by each

[163] The two options are not mutually exclusive. In some transactions, consumers may pay for the embedded option through more than one of the methods outlined. *See, e.g.,* Donald Keenan & James J Kau, *An Overview of the Option-Theoretic Pricing of Mortgages,* 6 Journal of Housing Research 217 (1995) (providing an overview of options embedded in residential mortgages); James J Kau, Donald Keenan, Walter Muller & James Epperson, *A Generalized Valuation Model for Fixed-Rate Mortgages with Default and Prepayment,* 11 Journal of Real Estate Finance & Economics 5 (1995) (providing a traditional method to value these options numerically); Robert R. Jones and David Nickerson, *Mortgage Contracts, Strategic Options and Stochastic Collateral,* 24 Journal of Real Estate Finance & Economics 35 (2002) (generating numerical values, in current dollars, for option-embedded mortgages in a continuous-time environment).

[164] Similarly, consumers who expect to pay their loans over a period sufficiently short as to make the purchase of discount loans unattractive may find it better at the end of this expected period to continue to pay their mortgage and, consequently, suffer an unanticipated loss from refraining from the purchase of points. *See* Yan Chang & Abdullah Yavas, *Do Borrowers Make Rational Choices on Points and Refinancing?,* 37 Real Estate Economics 635 (2009) (offering empirical evidence that consumers in their sample data remain in their current fixed-rate mortgages for too short a time to recover their initial investment in discount points). Other empirical evidence, however, conflicts with these results in regard to both the frequency and magnitude of losses. Simple numerical calculations that take into account taxes, local volatility in property values, and returns on alternative assets highlight the difficulty in drawing conclusions from much of the empirical data.

[165] Such a circumstance includes, for example, the case in which the need to understand and decide among loans with different points and fees combinations imposes a burden on some consumers. The existence of increased choice made available by this provision would, in this case, be itself a cost to the consumer. Based on standard economic reasoning, the Bureau believes, however, that the circumstances in which the exercise of its exemption authority has the potential to reduce consumer welfare, relative to the statutory prohibition, are, for the most part, quite rare.

[166] The choice over the means by which consumers compensate creditors for the prepayment option is of particular potential benefit to consumers who currently enjoy high liquidity but who either face prospects of diminished liquidity in the future or are more sensitive to the risk posed by a high variance in their future income or wealth. Examples of such consumers include retiring or older individuals wishing to secure their future housing, individuals who are otherwise predisposed to use their wealth for a one-time payment, consumers with relocation funds available, and consumers offered certain rebates by developers or other sellers. In situations where consumers are unaware of their own circumstance or their own relative financial acuity, some creditors may be able to benefit. For example, an unethical creditor may persuade those consumers unaware of their lower relative financial ability to make incorrect decisions regarding purchasing points. The outcome of this type of adverse selection will be reversed when consumers have a more accurate knowledge of their financial abilities than does the creditor.

[167] Conversely, the elimination of the option to pay upfront points and fees could, depending on the extant risk in creditors' portfolios and their perceptions of differential risk between neighborhoods, seriously reduce the access to mortgage credit for some consumers.

[168] In contrast, the prohibition on payment of upfront points and fees in the Dodd-Frank Act under most circumstances would ensure that the value of the option to share risk through discount points is lost to both the creditor and the consumer in those circumstances. Absent other means of hedging prepayment risk, creditors would either need to reduce the volume of loans they originate or incur greater costs of raising capital to fund such loans, owing to the increased risk to their business and, consequently, to their solvency.

[169] Credible signaling in such a situation, from the creditor's perspective, distinguishes two groups of consumers—one with low prepayment risk who purchase discount points, and the second a group not purchasing discount points and, consequently, expect to prepay their loan more rapidly than average—in what would otherwise be a pool of consumers who are perceived by the creditor to exhibit an equivalent measure of prepayment risk.

individual consumer. By charging different loan rates to consumers who pose different degrees of risk, creditors will earn a greater overall return from funding mortgage loans.[170]

Both creditors and consumers, consequently, benefit from the role of discount points as a credible signal. This enhances the economic efficiency of the mortgage markets. The Bureau believes that this private means for reducing the risk that the mortgage loan (a liability for the consumer) can pose to the assets of the creditor is a significant source of efficiency in the mortgage market.

In addition, the final rule benefits covered persons by avoiding the imposition of transition costs, including such things as internal accounting procedures and origination software systems, which would have been imposed had the full statutory prohibition taken effect.

Finally, mindful of the state of the United States housing and mortgage markets, the final rule also reduces the chance that potential disruptions to the mortgage market might arise from the significant changes to the regulations under which loan originators, creditors, and consumers operate. This final rule should help promote the recovery and stability of those markets.

2. Compensation Based on Transaction Terms

Restricting the means by which a loan originator receives compensation is a way to mitigate potential harm to consumers arising from moral hazard on the part of loan originators.[171] Similar to the existing rule, the Dodd-Frank Act includes such restrictions to mitigate the potential harm to consumers arising from such moral hazard.

The Dodd-Frank Act generally follows the existing rule's prohibition on compensating an individual loan originator based on the terms of a transaction. Although the statute and the existing rule are clear that an individual loan originator cannot be compensated differently based on the terms of the individual loan originator's transactions, they do not expressly address whether the individual loan originator may be compensated based on the terms of multiple transactions, taken in the aggregate, of multiple individual loan originators employed by the same creditor or loan originator organization.

The Bureau is aware that loan originator organizations may be unsure of how the restrictions on compensation in the current rule apply to compensation based on the profits of the organization.[172] The final rule and commentary address this uncertainty by clarifying the scope of the compensation restrictions in existing § 1026.36(d)(1)(i).[173] The final rule treats different methods of compensation differently based on an analysis of the incentives for originators to engage in moral hazard, as created for originators by each such method. The final rule permits a creditor or loan originator organization to make contributions to designated tax-advantaged plans (which include defined benefit and contribution plans that satisfy the qualification requirements of Internal Revenue Code section 401(a) or certain other Internal Revenue Code sections), even if the contributions are made out of mortgage-related business profits. The final rule also permits compensation under non-deferred profits-based compensation plans even if the amounts paid are funded through mortgage-related business profits, if: (1) The percentage of a loan originator's compensation attributable to such compensation is equal to or less than 10 percent of total compensation; or (2) the individual loan originator has been a loan originator for ten or fewer transactions during the preceding 12-month period, *i.e.,* a de minimis test for individuals who originate a very small number of transactions per year. The final rule, however, generally reaffirms the existing rule insofar as it does not permit, under non-deferred profit-based compensation plans and designated defined contribution plans, that individual loan originators be compensated based on the terms of their individual transactions.

Potential Benefits and Costs to Consumers

The final rule benefits consumers by clarifying the existing rule to address and mitigate the moral hazard inherent in the nature of profits-based compensation and other types of compensation that are directly or indirectly based on the terms of multiple transactions of an individual loan originator (these are referred to in this section and the next section as ''profits-based compensation''). Limiting such profits-based compensation for many firms limits the incentives to steer consumers into more expensive loans. To the extent that the existing rule already prohibits a type of compensation plan for loan originators, the final rule's prohibition of such a plan will not result in any new benefits to consumers. The Bureau's approach permits compensation under non-deferred profits-based compensation plans and compensation through designated tax-advantaged plans[174] only in cases in which the relationship between transaction terms and such forms of compensation are sufficiently weak to render insignificant any potential for steering incentives.

These forms of compensation are designed to provide individual loan originators and other individuals working for the creditor or loan originator organization with greater performance incentives and to align their interests with those of the owners of the entity they work for.[175] When moral hazard exists, however, such compensation determined with reference to profits could lead to misaligned incentives on the part of individual loan originators with respect to consumers. The magnitude of adverse incentives arising from profits-based compensation, however, depends on several variables.[176] These include the

[170] In this situation where the efficiency of the market is only impaired by adverse selection, this increase in creditor returns is independent of whether the creditor sells loans in the secondary market or chooses to engage in hedging to hold these mortgages in portfolio.

[171] Moral hazard, in the current context of mortgage origination, depends fundamentally on the advantage the loan originator has in knowing the least expensive transaction terms acceptable to creditors and greater overall knowledge of the functioning of mortgage markets. *See* Holden Lewis, *''Moral Hazard'' Helps Shape Mortgage Mess,* Bankrate (Apr. 18, 2007), *available at http://www.bankrate.com/brm/news/mortgages/20070418_subprime_mortgage_morality_a1.asp* (providing a practitioner description of the costs of such moral hazard on the current mortgage and housing industries).

[172] Such compensation includes bonuses paid under profit-sharing plans, and contributions by creditors and loan originator organizations to designated and non-designated benefit and contribution plans.

[173] As noted in the section-by-section analysis, the Bureau issued CFPB Bulletin 2012–2 in response to the questions it received regarding the applicability of the current regulation to designated plans and non-designated plans, and this regulation is intended in part to provide further clarity on such issues. Until the final rule goes into effect, the clarifications in CFPB Bulletin 2012–2 will remain in effect.

[174] Payments to designated retirement plans include, for example, employer contributions to employee 401(k) plans.

[175] Bengt Holmstrom, *Moral Hazard and Observability,* Bell Journal of Economics 74 (1979), provides the first careful analysis of the effects such compensation methods have on employee incentives.

[176] When multiple originators are working for a given loan originator organization or creditor, the compensation to each individual loan originator will depend upon on the aggregate efforts of all the loan originators working for this entity, rather than directly on the individual loan originator's own performance. Consequently, if we compare the efforts of an individual loan originator working for a smaller entity with those of another individual at

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number of individual loan originators working for the creditor or loan originator organization that contributes to the funds available for profits-based compensation, the means by which shares of the profits are distributed to the individual loan originators working for the same firm, and the ability of owners to monitor the current value of a loan on an ongoing basis.

The Bureau received a number of comments from industry disagreeing with the premise that profits-based compensation could create incentives for individual loan originators to persuade consumers to accept transactions terms that are costly for the consumer but more profitable for the loan originator. Some industry commenters admitted that such incentives existed but believed that, with regard to profits-based compensation, the incentives were insignificant. Commenters from consumer groups generally asserted that profits-based compensation creates incentives for individual loan originators to steer consumers into loans that are more costly to the consumer.

The Bureau recognizes that the potential that profits-based compensation has to create adverse incentives for individual loan originators depends, in general, on both how the efforts of individual loan originators affect profits and how those profits affect the compensation distributed to individual loan originators. The Bureau also recognizes that, depending on the particular environment in which a particular individual loan originator conducts business, these adverse incentives could decline as the number of individual loan originators involved in the specified profit-sharing plan increases.

The Bureau, however, notes that the current state of academic research has not provided an unequivocal answer to the question of whether any given profit-based compensation arrangement will produce incentives sufficiently strong for individual loan originators to engage in consumer steering. The Bureau also notes that this research, whether based on theoretical or empirical methods, shows that the potential for any profit-sharing plan to create adverse incentives are acutely sensitive to the specific features of the working environment and the means by which such profits are distributed to the relevant individual loan originators.[177] Finally, the Bureau notes that any potential reduction in the strength of these incentives is almost surely insufficient, under all realistic circumstances, to eliminate them entirely.[178]

Despite the uncertainties the remain in the economic literature, the Bureau believes that the approach taken in the final rule will benefit consumers by mitigating the moral hazard inherent in compensation systems that are based, directly or indirectly, on the terms of mortgage loan transactions, including those based on multiple transactions.

Potential Benefits and Costs to Covered Persons

As described above, considering the benefits, costs, and impacts of this provision requires the understanding of current industry practice against which to measure any changes. As discussed, the Bureau is aware, based in part on outreach to and inquiries received from industry, that originator organizations may be unclear about the application of the existing rule to profits-based compensation plans, including non-deferred profits-based compensation and employer compensation through designated plans. In light of this lack of clarity, the Bureau believes that industry practice likely varies and therefore any determination of the costs and benefit of the final rule depend critically on assumptions about current firm practices.

Firms that currently offer profits-based compensation for individual loan originators that would continue to be allowed under the final rule should incur no costs from the final rule. They could, however, benefit from the presence of a regulation and accompanying official commentary that clarifies which methods of loan originator compensation are permissible. Notably, the final rule explicitly states that employer contributions to designated defined contribution plans in which individual loan originators participate are permitted, provided that the contributions are not based on the terms of the individual loan originator's transactions. Such firms can continue to benefit from these arrangements, which have the potential to motivate individual productivity, to reduce potential intra-firm moral hazard by aligning the interests of individual originators with those of creditor or loan originator organization for whom they work and to reduce the potential for increased costs arising from adverse selection in the retention of more productive individual loan originators. Firms that do not offer such plans would benefit, with the increased clarity of the final rule, from the opportunity to do so should they so choose.[179]

Similarly, some firms may currently compensate their individual loan originators through methods, such as designated defined benefit plans, the legality of which may have been unclear, with different originator organizations interpreting the existing rule differently. The final rule benefits these firms by clarifying the legality of various compensation practices.

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a larger entity, the effort by the individual at the larger entity will be less than the effort of the individual at the smaller entity, owing to the smaller influence any individual at the larger entity has on the amount of compensation awarded to the individual. This relationship between individual effort and the total number of peers in a given entity is termed ''free-riding.'' Free riding behavior has been extensively analyzed: Surveys of these analyses appear in Martin L. Weitzman, *Incentive Effects of Profit Sharing, in Trends in Business Organization: Do Participation and Cooperation Increase Competitiveness?* (Kiel Inst. of World Econs.1995), *available at http://ws1.ad.economics.harvard.edu/faculty/weitzman/files/IncentiveEffectsProfitSharing.pdf.*;

[177] Economic research has established the general principle that the amount of work individuals put into a given task, in response to remuneration based on the sharing of profits, declines as the number of their peers increases (''free-riding.''). No principle with such generality has been shown, however, in regard to the rate of this decline and the amount of individual work effort for any particular group of employees. Features of the means by which profits are distributed to individuals and the individual's environment within a given firm, such as the individual's ability to observe the performance of his peers and the frequency of managerial monitoring of individual performance, strongly affect these variables, as shown in a number of recent studies, including empirical and experimental research papers: Susan Helper, et al., *Analyzing Compensation Methods in Manufacturing: Piece Rates, Time Rates, or Gain-Sharing?,* (NBER Working Paper No. 16540, 2010); R. Mark Isaac & James M. Walker, *Group Size Effects in Public Goods Provision: The Voluntary Contributions Mechanism,* Quarterly Journal of Economics, 1988, 103 (1), 179–199; Xavier Gine & Dean Karlan *Peer Monitoring and Enforcement: Long Term Evidence from Microcredit Lending Groups with and without Group Liability,* (2008); and in a vast number of theoretical research papers, such as that of Bengt Holmström and Paul Milgrom, 1991, Multitask Principal Agent Analyses: Incentive Contracts, Asset Ownership and Job Design, Journal of Law, Economics and Organizations. Several surveys of this research have been published, including that of Candice Prendergast, *The Provision of Incentives in Firms,* J Econ. Literature, 7, 37 (1999), among others.

[178] Examples of empirical evidence of the persistence of moral hazard among employees in commercial and retail lending, include originators of residential mortgages, appears in Sumit Agarwal & Itzhak Ben-David, *Do Loan Officers' Incentives Lead to Lax Lending Standards?,* (Federal Reserve Bank of Chicago, Working Paper, 2012); Aritje Berndt, et al., *The Role of Mortgage Brokers in the Subprime Crisis,* (Carnegie Mellon University, Working Paper, 2010). Shawn Coleet, et al., *Rewarding Calculated Risk-Taking: Evidence from a Series of Experiments with Commercial Bank Loan Officers,* (Harvard Business School, Working Paper, 2010).

[179] Some firms may choose not to offer such compensation. In certain circumstances, an originating institution (perhaps unable to invest in sufficient management expertise) will see reduced profitability from adopting profits-based compensation plans.

As discussed above, the final rule permits compensation under non-deferred profits-based compensation plans, including bonuses, to be paid from mortgage-related profits if such compensation for an individual loan originator does not, in the aggregate, exceed 10 percent of the individual loan originator's total compensation. This will benefit firms that would prefer to pay these types of bonuses or make these types of contributions out of mortgage-related profits, but do not because of uncertainty about the application of the existing rule. Firms that currently compensate individual loan originators through non-deferred profits-based compensation plans in excess of 10 percent of individual loan originators' total compensation might have to adjust their non-deferred profits-based compensation to comply with the 10-percent total compensation test under the final rule. This may impose some adjustment costs or may make it more costly to attract or retain qualified loan originators.

The final rule also contains a de minimis provision exempting individuals who originate ten or fewer loans per year from limitations on non-deferred profits-based compensation. This provision is intended to avoid penalizing those individuals whose compensation from the origination of a small number of loans is insufficient to give them incentives inimical to the welfare of consumers. Industry commenters generally favored the de minimis exception, although a few commenters preferred a higher value for the de minimis threshold (*e.g.,* one trade association representing banks requested a threshold of 15). The Bureau's survey of recent research into the relation of the total number of employees in a given firm, the value of total compensation to any individual employee, and the effects on the behavior of individual employees of compensation that is based on the profits arising from the collective effort of all employees of that firm corroborates the judgment that any adverse incentives from profits-based compensation to an individual under the final rule's de minimis threshold are insignificant and do not affect the welfare of consumers.[180]

3. Qualification Requirements for Loan Originators

Section 1402 of the Dodd-Frank Act amends TILA to impose a duty on loan originators to be ''qualified'' and, where applicable, registered or licensed as a loan originator under State law and the Federal SAFE Act. Employees of depositories, certain of their subsidiaries, and bona fide nonprofit organizations currently do not have to meet the SAFE Act standards that apply to licensing, such as taking pre-licensure classes, passing a test, meeting character and fitness standards, having no felony convictions within the previous seven years, or taking annual continuing education classes. To implement the Dodd-Frank-Act's requirement that entities employing or retaining the services of individual loan originators be ''qualified,'' the final rule requires entities whose individual loan originators are not subject to SAFE Act licensing, including depositories and bona fide nonprofit loan originator entities, to: (1) Ensure that their individual loan originators meet character and fitness and criminal background standards similar to the licensing standards that the SAFE Act applies to employees of non-bank loan originators; and (2) provide appropriate training to their individual loan originators commensurate with the mortgage origination activities of the individual. The final rule mandates training appropriate for the actual lending activities of the individual loan originator and does not impose a minimum number of training hours.

Industry commenters to the proposal disagreed that there is a need for individual loan officers to meet qualification standards because loan originators already must comply with the requirements of prudential regulations. The Bureau also received a number of requests from industry representatives to refrain from adopting mandatory testing and education requirements in favor of instead requiring taking courses and passing examinations approved by the NMLSR. Finally, an association of mortgage bankers requested that the Bureau explore imposing a national test for all bank employees or employees of creditors that offer loans.

The Bureau notes that it is not opposed to the idea of future testing for all bank employees or employees of creditors who offer loans. Conditional on the current state of the mortgage market, however, the Bureau believes that the burden imposed by comprehensive testing might, at this time, be sufficiently burdensome to further decrease benefits to consumers, and covered persons as a whole.

Potential Benefits and Costs to Consumers

The primary benefit to consumers of the qualification provisions of the final rule are that tighter qualifications will screen out, on an ongoing basis after implementation of the final rule and with regard to some loan officers currently employed who have not previously been screened, those individual originators with backgrounds suggesting they could pose risks to consumers and will raise the level of loan originator expertise regarding the origination process. Both of these effects will likely decrease the harm that could be borne, unknowingly at the time of origination, by any individual consumer.

Several industry representatives, including national and State industry trade associations and large depository institutions, expressed doubt about whether consumers would receive significant benefits from the change in qualification requirements.

The Bureau believes that its qualification requirement will improve consumer welfare because it will help ensure that any individual loan originator with whom a consumer negotiates a loan will possess levels of expertise and integrity no less than those required in the final rule and assures consumer that they bear relatively little risk of encountering a loan originator who lacks these qualifications. While measuring the magnitude of this benefit is impossible with currently available public data, the Bureau notes that the its qualification requirement will not only convey a direct benefit to consumers, it will, in addition, benefit both consumers and covered persons through the reduction of this source of adverse selection among new originators. This reduction will increase economic efficiency in the market and allow more mutually beneficial loan transactions to occur.

Potential Benefits and Costs to Covered Persons

The increased requirements for institutions that employ individuals not licensed under the SAFE Act would further assure that the individual loan originators in their employ satisfy those levels of expertise and standards of probity as specified in the final rule.[181] This would have a positive effect by tending to reduce any potential liability they incur in future mortgage transactions and to enhance their reputation among consumers. If the requirements, as expected, reduce the likelihood that consumers will encounter loan originators with

[180] See footnotes 100 and 101 for a number of examples of research in this area.

[181] Under Regulation G, depository institutions must already obtain criminal background checks for their individual loan originator employees and review them for compliance under Section 19 of the FDIA.

inadequate expertise or integrity, this may lead to an increase in consumer confidence and may possibly increase the number of consumers willing to engage in these transactions. Some entities could, however, face increased recruitment, training, and related costs in complying with these new requirements.

In addition, relative to current market conditions, the final rule would create a more level ''playing field'' between non-depository institutions and depository and nonprofit institutions with regard to the enhanced training requirements and background checks that would be required of depository institutions. This may help mitigate possible adverse selection in the market for individual originators, in which individuals who cannot meet the requirements for non-depository institutions might seek employment by depository and nonprofit institutions.

These requirements may also slightly limit the pool of employees from which to hire, relative to the pool from which they can hire under existing requirements. Similarly, the requirement for credit checks for new hires (and those who were not screened under standards in effect at the time of hire) will result in some minimal increased costs. Bona fide nonprofit institutions not currently subject to the SAFE Act will have to incur the costs of both the criminal background check and the credit check.

4. Mandatory Arbitration and Waivers of Federal Claims

Section 1414 of the Dodd-Frank Act added section 129C(e) to TILA. Section 129C(e)(1) prohibits the inclusion of terms in any contract or agreement for a residential mortgage loan (as defined in the Dodd-Frank Act) or extension of open-end credit secured by the principal dwelling of the consumer that require arbitration or any other non-judicial procedure as the method for resolving any controversy or settling any claims arising out of the transaction. Section 129C(e)(2) provides that a consumer and creditor may nonetheless agree, after a dispute arises, to use arbitration or other non-judicial procedure to resolve the dispute. The statute further provides in section 129C(e)(3) that no covered transaction secured by a dwelling, and no related agreement between the consumer and creditor, may bar a consumer's ability to bring a claim in court in connection with any alleged violation of Federal law. Section 1026.36(h) of the final rule implements and clarifies these statutory provisions.

The restrictions on mandatory arbitration and waiver of Federal claims are imposed by the Dodd-Frank Act. The Bureau is implementing these protections by regulation. The Bureau believes that implementing regulations provide benefits to consumers and covered persons by providing clarity and thereby facilitating compliance with the statutory provisions.

The Bureau received one comment from an industry association asserting that the prohibition of mandatory arbitration as a means of resolving disputes between consumer and creditor, and instead allowing the consumer to seek resolution through the court system would increase the cost of credit to consumers. One member of industry also speculated that, by allegedly expanding the statutory prohibition of mandatory arbitration to cover open-end consumer credit plans other than those secured by the principal dwelling of the consumer, the final rule could impose significant costs on those creditors making open-ended and other forms of credit available to consumers. Several consumer groups expressed concern regarding the timing of the implementation of the provision, asserting that, since the proposal made no substantive changes to the statutory provision, the effective date of implementation provided by the statute should also be maintained.

To the extent that contractual terms requiring mandatory arbitration and restricting waiver Federal claims benefit covered persons by reducing litigation and other expenses, the statute and implementing regulation will create costs for covered persons. The Bureau notes, however, that covered persons and consumers will still be permitted to agree, after a dispute has arisen, to submit *that* dispute to arbitration. The Bureau also notes that, to its knowledge, no compelling empirical evidence supports the comments that consumer access to the court system for the resolution of disputes would increase the cost of such mortgages to consumers. In addition, no evidence supporting this prediction was presented by the industry association making this assertion or by any other industry or consumer representative.

The Bureau disagrees with the assertion that the final rule would impose costs on those creditors marketing open-ended loans and other forms of credit not secured by principal dwelling of the consumer. Since proposed § 1026.36(j), implemented in the final rule as § 1026.36(b), clarifies that the only open-end consumer credit plans to which § 1026.36(h) applies are those secured by the principal dwelling of the consumer, no additional litigation cost is imposed on these creditors from this source.[182]

5. Creditor Financing of ''Single Premium'' Credit Insurance

Dodd-Frank Act section 1414 added section 129C(d) to TILA. Section 129C(d) pertains to a creditor financing credit insurance fees for the consumer. Although the provision permits insurance premiums to be calculated and paid in full per month, this provision prohibits a creditor from financing any fees, including premiums, for credit insurance in closed- and certain open-end loan transactions secured by a dwelling. The final rule implements the relevant statutory provision of the Dodd-Frank Act. Owing to the lack of transparency consumers may experience in negotiating a mortgage loan with a creditor while simultaneously needing to decide to finance their insurance, such as through an increase in their mortgage payments, with this same creditor, the Bureau believes there is significant potential for such a combined transaction to harm the consumer. The final rule should, on this basis, benefit consumers.

6. Additional Potential Benefits and Costs

Covered persons will have to incur some costs in reviewing the final rule and adapting their business practices to any new requirements. The Bureau notes that many of the provisions of the final rule do not require significant changes to current practice, since many of the provisions in this final rule are also in the existing rule, and therefore these costs should be minimal for most covered persons.

The Bureau has considered whether the final rule would lead to a potential reduction in access to consumer financial products and services. Firms will not have to incur substantial operational costs nor any potential loss owing to adverse selection among loan originators. As a result, the Bureau does not anticipate any material impact on existing consumer access to mortgage credit. The Bureau, however, does note that its final rule precludes any reduction in credit access that could otherwise occur without its exemption from the statutory prohibition on points and fees.

[182] However, to reduce uncertainty, the Bureau is including a statement in § 1026.36(h) that it is applicable to ''a home equity line of credit secured by the consumer's principal dwelling.''

E. Potential Specific Impacts of the Final Rule

1. Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, as Described in Section 1026 [183]

The Bureau believes that its final rule will provide significant benefits to smaller creditors. Although some creditors could incur potential costs associated with stricter qualification standards for newly hired loan officers, because of the Bureau's use of its exemption authority, smaller creditors will receive a significant benefit from their ability to continue to hedge the prepayment risk inherent in fixed-rate mortgages through the sale of discount points to their consumers. Smaller creditors normally use this method to hedge such risk because the relatively small volume of loans they finance make prohibitive the costs they incur in using other means of hedging, such as the sale of their loans in the secondary market or through transactions in swap and other derivatives markets. Absent the Bureau's use of its exemption authority, the statue's prohibition on the sale of discount points combined with extensive restrictions on prepayment penalties would have resulted in virtually all smaller creditors choosing to either originate a smaller volume of mortgage loans or bearing a higher degree of portfolio risk. This would result in the average smaller creditor being far less competitive with their larger rivals, losing market share, paying higher costs of funds, and bearing a greater risk of insolvency. The consequence of these disadvantages would inevitably be higher frequencies among small creditors of both bankruptcy and absorption by large financial holding companies. This would result in higher interest rates and reduced access to credit to consumers. The final rule saves smaller creditors from these potential costs by exempting them from the ban on points and fees.

2. Impact on Consumers in Rural Areas

Consumers in rural areas are unlikely to experience benefits or costs from the final rule that significantly differ from those experienced by consumers in general. To the extent that consumers in rural areas may depend more heavily on small creditors, however, they may be more affected by the effects of the rule on small creditors, as described above.

[183] Approximately 50 banks with under $10 billion in assets are affiliates of large banks with over $10 billion in assets and subject to Bureau supervisory authority under Section 1025. However, these banks are included in this discussion for convenience.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Bureau is also subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.[184] The Small Business Administration (SBA) designates an entity as ''small'' based on whether the primary products or services it offers are within thresholds for these products and services set by the North American Industry Classification System (NAICS). An entity is considered ''small'' if it is an insured depository institution or credit union and holds $175 million or less in assets, or, if it is a non-depository mortgage lender, a mortgage brokerage or a mortgage servicer, if it generates $7 million or less in annual receipts.[185]

The Bureau did not certify that the proposed rule would have no significant economic impact on a substantial number of small entities. The Bureau, consequently, convened a Small Business Review Panel to obtain advice and recommendations of representatives of the regulated small entities. The section-by-section analysis in the proposal included detailed information on the Small Business Review Panel.[186] The Panel's advice and recommendations may be found in the Small Business Review Panel Report.[187] The section-by-section analysis in the proposal also included discussion of each Small Business Review Panel Report recommendation, and many of recommendations were included in the proposal.

The proposal contained an Initial Regulatory Flexibility Analysis (IRFA),[188] pursuant to section 603 of the RFA. In the IRFA, the Bureau solicited comment on the impact to small entities that would have resulted from the proposed provisions regarding record retention; the prohibition on the payment of upfront points and fees; the prohibition on compensation based on a transaction's terms; the use of mandatory arbitration in mortgage loan agreements; the prohibition on creditor financing of single premium credit insurance; loan originator qualification requirements; the prohibition of dual compensation of loan originators; restrictions on reducing loan originator compensation to cover the cost of pricing concessions; and the prohibition on compensation of loan originators based on a proxy for a relevant term in the mortgage transaction. Comments addressing the impacts of record retention, the prohibition on the payment of upfront points and fees, the prohibition on compensation based on a mortgage transaction's terms, the use of mandatory arbitration in mortgage loan transactions, and the prohibition on creditor financing of single premium credit insurance are discussed below. Comments addressing loan originator qualification requirements, the dual compensation of loan originators, the reduction in loan originator compensation to bear the cost of pricing concessions, and the compensation of loan originators based on a proxy for a term in the mortgage transaction are addressed in the section-by-section analysis above. The section-by-section analysis above also notes the exemption granted by the Bureau under Dodd-Frank Act section 1403 and other authority in the final rule of all entities, including small entities, from the statutory ban on upfront points and fees.

Based on the comments received, and for the reasons stated below, the Bureau is not certifying that the final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, the Bureau has prepared the following final regulatory flexibility analysis pursuant to section 604 of the RFA.

A. A Statement of the Need for, and Objectives of, the Rule

During the aftermath of the recent crisis in financial markets, in 2010 the Board issued the 2010 Loan Originator Final Rule. Authority for that rule now resides with the Bureau.[189]

The 2010 Loan Originator Final Rule addressed many concerns regarding the lack of transparency, consumer confusion, and steering incentives created by certain residential loan originator compensation structures. The Dodd-Frank Act included a number of provisions that substantially resembled

[184] 5 U.S.C. 609.

[185] The current SBA size standards are found on SBA's Web site at *http://www.sba.gov/content/table-small-business-size-standards*.

[186] 77 FR 55272, 55341–55343 (Sept. 7, 2012).

[187] Final Panel Report available in the Proposed Rule Docket: Docket ID No. CFPB–2012–0037, *available at http://www.regulations.gov/#!documentDetail;D=CFPB-2012-0037-0001*.

[188] 77 FR 55272, 55341–55343 (Sept. 7, 2012).

[189] A prior description of the details of the origin and nature of the 2010 Loan Originator Final Rule may be found in Background, Part II, appearing above.

those in the 2010 Loan Originator Final Rule, but also added further provisions.

The Board noted, in adopting the 2010 Loan Originator Final Rule, that the Dodd-Frank Act would necessitate further rulemaking to implement the additional provisions of the legislation not reflected by the regulation. These provisions are new TILA sections 129B(b)(1) (requiring each mortgage originator to be qualified and include unique identification numbers on loan documents), (b)(2) (requiring depository institution compliance procedures), (c)(1) and (c)(2) (prohibiting steering incentives including prohibiting mortgage originators from receiving compensation that varies based on loan terms and from receiving origination charges or fees from persons other than the consumer except in certain circumstances), and 129C(d) and (e) (prohibiting financing of single-premium credit insurance and providing restrictions on mandatory arbitration agreements and waivers of Federal claims), as added by sections 1402, 1403, and 1414 of the Dodd-Frank Act.

The Bureau, in undertaking this rulemaking, is also clarifying certain provisions of the 2010 Loan Originator Final Rule to provide additional clarity and reduce uncertainty to both consumers and covered persons.

The Dodd-Frank Act and TILA authorize the Bureau to adopt implementing regulations for the statutory provisions provided by sections 1402, 1403, and 1414 of the Dodd-Frank Act. The Bureau is using this authority to issue regulations to provide creditors and loan originators with clarity about their obligations under these provisions. The Bureau is also adjusting or providing exemptions to the statutory requirements, including the obligations of small entities, in certain circumstances. The Bureau is taking this action in order to ease burden when doing so would not sacrifice adequate protection of consumers.[190]

The objectives of this rulemaking are: (1) To revise current § 1026.36 and commentary to implement substantive requirements in new TILA sections 129B(b), (c)(1), and (c)(2) and 129C(d) and (e), as added by sections 1402, 1403, and 1414 of the Dodd-Frank Act; (2) to clarify ambiguities resulting from differences between current § 1026.36 and the new TILA amendments; (3) to adjust existing rules governing compensation to individual loan originators to account for Dodd-Frank Act amendments to TILA; and (4) to provide greater clarity and flexibility on several issues.

The Bureau adopts, in the final rule, a complete exemption to the Dodd-Frank Act ban on the consumer paying upfront points and fees that would otherwise apply to all covered transactions in which anyone other than the consumer pays compensation to a loan originator. Specifically, the final rule amends § 1026.36(d)(2)(ii) to provide that a payment to a loan originator that is otherwise prohibited by section 129B(c)(2)(A) of the Truth in Lending Act is nevertheless permitted pursuant to section 129B(c)(2)(B) of the Act, regardless of whether the consumer makes any upfront payment of discount points, origination points, or fees, as described in section 129B(c)(2)(B)(ii) of the Act, as long as the mortgage originator does not receive any compensation directly from the consumer as described in section 129B(c)(2)(B)(i) of the Act. Accordingly, the Bureau does not adopt the portion of the proposal that would have required creditors or loan originator organizations to generally make available an alternative loan without discount points or origination points or fees where they offer a loan with discount points or origination points or fees. This complete exemption is being implemented by the Bureau under Dodd-Frank Act section 1403 because, as explained in the section-by-section analysis, it is in the interest of consumers and the public interest, as well as under other authority.

The final rule also implements certain other Dodd-Frank Act requirements applicable to closed-end consumer credit transactions secured by a dwelling and open-end extensions of consumer credit secured by a consumer's principal dwelling. Specifically, the rule codifies TILA section 129C(d), which creates prohibitions on financing of premiums for single-premium credit insurance. The provisions of this rule also implement TILA section 129C(e), which restricts agreements requiring consumers to submit any disputes to arbitration and limits waivers of Federal claims, thereby preserving consumers' ability to seek redress through the court system after a dispute arises. The final rule also implements TILA section 129B(b)(2), which requires the Bureau to prescribe regulations requiring depository institutions to establish and monitor compliance of such depository institutions, the subsidiaries of such institutions, and the employees of both with the requirements of TILA section 129B and the registration procedures established under section 1507 of the SAFE Act.

In addition, the Dodd-Frank Act extended previous efforts by lawmakers and regulators to strengthen loan originator qualifications and regulate industry compensation practices. New TILA section 129B(b) imposes a duty on loan originators to be ''qualified'' and, where applicable, registered or licensed as a loan originator under State law and the Federal SAFE Act and to include unique identification numbers on loan documents. The final rule implements this section and expands consumer protections by requiring entities whose individual loan originators are not subject to SAFE Act licensing requirements, including depositories and bona fide nonprofit loan originator entities, to: (1) Ensure that their individual loan originators, hired on or after the rule's effective date (or otherwise not screened according to procedures in place when they were hired), meet character and fitness and criminal background standards similar to the licensing standards that the SAFE Act applies to employees of non-bank loan originators; and (2) provide appropriate training to their individual loan originators commensurate with the mortgage origination activities of the individual.

Furthermore, the final rule adjusts existing rules governing compensation to individual loan originators in connection with closed-end mortgage transactions to account for Dodd-Frank Act amendments to TILA and provide greater clarity and flexibility. Specifically, the final rule preserves, with some refinements, the prohibition on the payment or receipt of commissions or other loan originator compensation based on the terms of the transaction (other than loan amount) and on loan originators being compensated simultaneously by both consumers and other persons in the same transaction. To further reduce potential steering incentives for loan originators created by certain compensation arrangements, the final rule also clarifies and revises restrictions on profits-based compensation for loan originators, depending on the potential for incentives to steer consumers to different transaction terms.

Finally, the final rule makes two changes to the current record retention provisions of § 1026.25 of TILA. The revised provisions: (1) Require a creditor to maintain records of the compensation paid to a loan originator, and the governing compensation

[190] The new statutory requirements relating to compensation take effect automatically on January 21, 2013, as written in the statute, unless final rules are issued on or prior to that date that provide for a later effective date.

agreement, for three years after the date of payment; and (2) require a loan originator organization to maintain records of the compensation it receives from a creditor, a consumer, or another person and that it pays to its individual loan originators, as well as the compensation agreement that governs those receipts or payments, for three years after the date of the receipts or payments. By ensuring that records associated with loan originator compensation are retained for a time period commensurate with the statute of limitations for causes of action under TILA section 130 and are readily available for examination, these modifications to the existing recordkeeping provisions will prevent circumvention or evasion of TILA and facilitate compliance.

The legal basis for the final rule is discussed in detail in the legal authority analysis in the section-by-section analysis above.

B. Summary of Issues Raised by Comments in Response to the Initial Regulatory Flexibility Analysis.

In accordance with section 3(a) of the RFA, the Bureau prepared an IRFA. In the IFRA, the Bureau estimated the possible compliance costs for small entities from each major component of the rule against a pre-statute baseline. The Bureau requested comments on the IRFA but did not receive any such comments. The Bureau did receive some comments describing in general terms the impact of the proposed rule on small creditors and loan originator organizations and the need for exemptions for small entities from various provisions of the proposed rule. These comments, and the responses, are discussed in the section-by-section analysis.

C. Response to the Comment From the Small Business Administration Office of Advocacy

SBA Advocacy provided a formal comment letter to the Bureau in response to the proposal. Among other things, the letter expressed concern about the following issues: Record retention; the prohibition of consumer payment of upfront points and fees; the restrictions on compensation based on transaction terms; and the mandatory arbitration, waiver of Federal claims, and credit insurance provisions.

1. Record Retention

SBA Advocacy noted that the Small Entity Representatives had expressed concern that the proposed requirements for a loan originator organization or creditor to retain for three years documents evidencing the amount of compensation paid to a loan originator were unclear and overbroad, especially given the broad definition of ''compensation'' in the proposed rule. The Bureau disagrees that the record retention requirements are either unclear or overbroad, and the Bureau provides examples in the commentary to § 1026.25(c)(2) of the types of records that could be sufficient to satisfy the record-retention requirements, depending on the type of compensation.

2. Upfront Points and Fees

SBA Advocacy relayed the Small Entity Representatives' strong support of the Bureau's proposed use of its exemption authority under the Dodd-Frank Act to allow consumers to pay upfront discount and origination points and fees. SBA Advocacy noted that the Small Entity Representatives were concerned, however, that the proposal's requirement for creditors or loan originator organizations to offer an alternative loan without discount points or origination points or fees (the ''zero-zero alternative'') would have been unrealistic for small entities. For reasons discussed in the section-by-section analysis, the Bureau is not implementing the zero-zero alternative and is instead exercising its authority under the points and fees provision to effect a complete exemption to the prohibition on consumer payment of upfront points and fees.

3. Compensation Based on Transaction Terms

SBA Advocacy expressed concern with the portion of the proposal that would have permitted bonuses and contributions to non-designated plans from mortgage-related profits only if the mortgage-business revenue component of total revenues is below a certain threshold.[191] For reasons discussed in the section-by-section analysis, the final rule does not include this provision. Instead, the Bureau is implementing a final rule that permits compensation under non-deferred profits-based compensation plans, in which the compensation is determined with reference to profits from mortgage-related business, provided that the compensation is not directly or indirectly based on the terms of the individual's residential mortgage loan transactions and the compensation is equal to or less than 10 percent of the loan originator's total compensation.

SBA Advocacy also expressed concern that any mistake in compensation structure might result in loans being returned from the secondary market and a massive buyback. To the extent that violations of the rule could lead to this result, it is possible that such an event could occur today because Regulation Z already contains provisions that prohibit the payment of compensation based on transaction terms as well as payment of loan originator compensation by both a consumer and a person other than the consumer on the same transaction. The final rule provides clarifications and grants relief under certain circumstances with respect to these existing restrictions.

The Bureau believes that the application of the 10-percent total compensation test will be less likely to result in the scenarios described by SBA Advocacy than the proposed revenue test. The Bureau acknowledges that several industry commenters expressed concern about potential TILA liability where an error is made under the revenue test calculation; SBA Advocacy's concern about buyback is related to these concerns. As a threshold matter, creditors and loan originator organizations can choose whether or not to pay this type of compensation, and a payer of compensation has full knowledge and control over the numerical and other information used to determine the compensation. That said, the Bureau is sensitive to SBA Advocacy's concerns but believes they are not warranted to nearly the same degree with the 10-percent total compensation test. Under the revenue test, an error in determining the amount of total revenues or mortgage-related revenues could have potentially impacted all awards of profits-based compensation to individual loan originators for a particular time period. Because the 10-percent total compensation test focuses on compensation at the individual loan originator level, however, the potential liability implications of a calculation error largely would be limited to the effect of that error alone. In other words, in contrast to the revenue test, an error under the 10-percent total compensation test would not likely have downstream liability implications as to other compensation payments across the company or business unit and, therefore, would be extremely unlikely to result in the ''massive buyback'' described by SBA Advocacy. The Bureau also believes that creditors and loan originator organizations will develop policies and procedures to minimize the possibility of such errors.

[191] The Bureau previously used the term ''qualified,'' not ''designated.''

4. Mandatory Arbitration, Waivers of Federal Claims, and Credit Insurance

SBA Advocacy commented that it was uncertain why the mandatory arbitration and credit insurance provisions were addressed in the loan originator compensation rule. The provisions in the final rule are intended to clarify the prohibitions on mandatory arbitration, waivers of Federal claims, and creditor financing of single premium credit insurance in the Dodd-Frank Act.

D. Description and, Where Feasible, Provision of an Estimate of the Number of Small Entities to Which the Final Rule Will Apply

As discussed in the Small Business Review Panel Report, for purposes of assessing the impacts of the regulations being implemented on small entities, ''small entities'' are defined in the RFA to include small businesses, small nonprofit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A ''small business'' is determined by application of SBA regulations and reference to the North American Industry Classification System (''NAICS'') classifications and size standards.[192] 5 U.S.C. 601(3). A ''small organization'' is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). A ''small governmental jurisdiction'' is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5).

During the Small Business Review Panel process, the Bureau identified six categories of small entities that may be subject to the proposed rule for purposes of the RFA:

- Commercial banks (NAICS 522110);
- savings institutions (NAICS 522120); [193]
- credit unions (NAICS 522130);
- firms providing real estate credit (NAICS 522292);
- mortgage brokers (NAICS 522310); and
- small nonprofit organizations.

Commercial banks, savings institutions, and credit unions are small businesses if they have $175 million or less in assets. Firms providing real estate credit and mortgage brokers are small businesses if their average annual receipts do not exceed $7 million.

A small nonprofit organization is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field. Small nonprofit organizations engaged in loan origination typically perform a number of activities directed at increasing the supply of affordable housing in their communities. Some small nonprofit organizations originate mortgage loans for low and moderate-income individuals while others purchase loans originated by local community development lenders.

The Bureau's estimated number of affected and small entities by NAICS Code and engagement in loan origination appears in the table below. The estimates in this analysis are based upon data and statistical analyses performed by the Bureau. To estimate counts and properties of mortgages for entities that do not report under HMDA, the Bureau has matched HMDA data to Call Report data and NMLS and has statistically projected estimated loan counts for those depository institutions that do not report these data either under HMDA or on the NCUA call report. The Bureau has projected originations of higher-priced mortgage loans for depositories that do not report HMDA in a similar fashion. These projections use Poisson regressions that estimate loan volumes as a function of an institution's total assets, employment, mortgage holdings and geographic presence.

Category	NAICS code	Total entities	Small entities	Entities that originate any mortgage loans [b]	Small entities that originate any mortgage loans
Commercial Banking	522110	6,505	3,601	[a] 6,307	[a] 3,466
Savings Institutions	522120	930	377	[a] 922	[a] 373
Credit Unions [c]	522130	7,240	6,296	[a] 4,178	[a] 3,240
Real Estate Credit [d e]	522292	2,787	2,294	2,787	[a] 2,294
Mortgage Brokers	522310	8,051	8,049	[f] N/A	[f] N/A
Total [g]		25,513	20,617	14,194	9,373

Source: 2011 HMDA, Dec 31, 2011 Bank and Thrift Call Reports, Dec 31, 2011 NCUA Call Reports, 2010 and 2011 NMLSR.
[a] For HMDA reporters, loan counts from HMDA 2011. For institutions that are not HMDA reporters, loan counts projected based on Call Report data fields and counts for HMDA reporters.
[b] Entities are characterized as originating loans if they make one or more loans.
[c] Does not include cooperatives operating in Puerto Rico. The Bureau has limited data about these institutions, which are subject to Regulation Z, or their mortgage activities.
[d] NMLSR Mortgage Call Report (''MCR'') for 2011. All MCR reporters that originate at least one loan or that have positive loan amounts are considered to be engaged in real estate credit (instead of purely mortgage brokers). For any institutions with missing revenue values, the probability that the institution was a small entity is estimated based on the count and amount of originations and the count and amount of brokered loans.
[e] Data do not distinguish nonprofit from for-profit organizations, but Real Estate Credit presumptively includes nonprofit organizations.
[f] Mortgage brokers do not originate (back as a creditor) loans.
[g] The total may be overstated to the extent that some entities that act as mortgage brokers also appear in other entity categories.

[192] The current SBA size standards are available on the SBA's Web site at *http://www.sba.gov/content/table-small-business-size-standards.*

[193] Savings institutions include thrifts, savings banks, mutual banks, and similar institutions.

E. Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for the Preparation of the Report

1. Reporting Requirements

The final rule does not impose new reporting requirements.

2. Recordkeeping Requirements

Regulation Z currently requires creditors to create and maintain records to demonstrate their compliance with provisions that apply to the compensation paid to or received by a loan originator. As discussed above in part V, the final rule requires creditors to retain these records for a three-year period, rather than for a two-year period as currently required. The rule applies the same requirement to organizations when they act as a loan originator in a transaction, even if they do not act as a creditor in the transaction. The revised recordkeeping requirements, however, do not apply to individual loan originators.

As discussed in the section-by-section analysis, the Bureau recognizes that increasing the period a creditor must retain records for specific information related to loan originator compensation from two years, as currently provided in Regulation Z, to three years may impose some marginal increase in the creditor's compliance burden in the form of the incremental cost of storage. The Bureau believes, however, that creditors should be able to use existing recordkeeping systems to maintain the records for an additional year at minimal cost. Similarly, although loan originator organizations may incur some costs to establish and maintain recordkeeping systems, loan originator organizations may be able to use existing recordkeeping systems that they maintain for other purposes at minimal cost. During the Small Business Review Panel process, the Small Entity Representatives were asked about their current record retention practices and the potential impact of the proposed enhanced record retention requirements. Of the few Small Entity Representatives who provided feedback on the issue, one creditor stated that it maintained detailed records of compensation paid to all of its employees and that a regulator already reviews its compensation plans regularly, and another creditor reported that it did not believe the proposed record retention requirement would require it to change its current practices. Therefore, the Bureau does not believe that the record retention requirements will create undue burden for small entity creditors and loan originator organizations.

3. Compliance Requirements

As discussed in detail in the section-by-section analysis, the final rule imposes new compliance requirements on creditors and loan originator organizations. The possible compliance costs for small entities from each major component of the final rule are presented below. In most cases, the Bureau presents these costs against a pre-statute baseline. As noted above in the section 1022(b)(2) analysis in part VII above, provisions where the Bureau has used its exemption authority are discussed relative to the statutory provisions. The analysis below considers the benefits, costs, and impacts of the following major provisions on small entities: (1) Upfront points and fees; (2) compensation based on a term of a transaction; and (3) qualification requirements for loan originations. It also discusses other provisions in less detail.

a. Upfront Points and Fees

The Dodd-Frank Act prohibits consumer payment of upfront points and fees in all residential mortgage loan transactions except those where no one other than the consumer pays a loan originator compensation tied to the transaction (*e.g.,* a commission) and provides the Bureau authority to waive or create exemptions from this prohibition if doing so is in the interest of consumer and in the public interest. As discussed in the Background and section-by-section analysis, the Bureau adopts in the final rule a complete exemption to the statutory ban on upfront points and fees. Specifically, the final rule amends § 1026.36(d)(2) to provide that a payment to a loan originator that is otherwise prohibited by section 129B(c)(2)(A) of TILA is nevertheless permitted pursuant to section 129B(c)(2)(B) of TILA, regardless of whether the consumer makes any upfront payment of discount points, origination points, or fees, as described in section 129B(c)(2)(B)(ii) of TILA, as long as the mortgage originator does not receive any compensation directly from the consumer as described in section 129B(c)(2)(B)(i) of TILA.

Benefits to Small Entities

The final rule's treatment of the payment of upfront points and fees has a number of potential benefits for small entities. First, relative to the complete prohibition on the payment of points and fees that the Dodd-Frank Act would have applied absent the exercise of the Bureau's exemption authority, the final rule maintains the opportunity during origination for the current wide choice consumers have in selecting a specific mortgage product from the current variety of mortgage products available to them. The ability of creditors and loan originator organizations, particularly small ones, to offer consumers this wide variety of choices, relative to that available under the baseline, occurs primarily because under the final rule consumers and particularly small creditors and loan originator organizations retain the opportunity to exchange, at the time of origination, a mutually agreeable share of the financial risk inherent in the future payments required by any given mortgage loan. Consumers, in this exchange, may decide to purchase discount points from the loan originator and in return receive a reduced loan rate which is commensurate with the lower degree of credit and prepayment risk now borne by the creditor holding the loan.

Moreover, the ability of small creditors to charge discount points in exchange for lower interest rates would accommodate those consumers who prefer to pay more at settlement in exchange for lower monthly interest charges and could produce a greater volume of available credit in residential mortgage markets. Preserving this ability would potentially allow a wider access to homeownership, which would benefit consumers, creditors, loan originator organizations, and individual loan originators. The ability to charge origination fees upfront also would allow small creditors to recover fixed costs at the time they are incurred rather than over time through increased interest payments or through the secondary market prices. And similarly, preserving the flexibility for affiliates of creditors and loan originator organizations to charge fees upfront should allow for these firms to charge directly for their services. This means that creditors and loan originator organizations may be less likely to divest such entities than if the Dodd-Frank Act mandate takes effect as written.

Costs to Small Entities

The Bureau's exercise of its statutory authority to create a full exemption from the Dodd-Frank Act prohibition on consumer payment of upfront points and fees maintains the current financial environment in which small creditors operate. Small creditors, and indirectly, loan originator organizations funding their loans through such creditors, have, relative to their larger rivals, limited means of hedging the costs of all the financial (credit and interest rate/prepayment) risk posed to them by the origination of a mortgage. These costs are borne by a creditor retaining such mortgages in its portfolio, but they are also borne by those that sell their mortgages in the secondary market, owing to the lower price investors will pay for mortgage pools with higher credit and prepayment risk.

Small creditors bear relatively high costs of participating in ancillary markets for financial instruments through which their larger rivals can more easily hedge mortgage risk. The primary means by which these small institutions can hedge this type of risk is by allowing consumers to purchase discount points. The sale of discount points to consumers in exchange for lower interest rates on loans can still cost smaller creditors relatively more, per dollar of current loan value, than their larger rivals, but, to the extent it exists, this relative cost posed to small creditors is far lower than that of using alternative means of hedging. If the Bureau had decided to finalize the prohibition on the payment of discount points, it would have, in combination with current regulatory restrictions on prepayment penalties, entirely eliminated the ability of small institutions to hedge risk at a price that allows them to compete with larger financial institutions. This inability to compete could conceivably have resulted in a significant reduction in the number of small creditors, whether through dissolution or through absorption by larger financial firms.

This ability to hedge risk through the continued ability of consumers to purchase discount points, however, could inflict losses to small creditors. These losses, while relatively minor in comparison to those benefits previously described, could nevertheless be of significant concern.

First, limiting the advantage of larger creditors in offering different combinations of points and fees would aid the competitiveness of small creditors.

Second, small creditors most often serve relatively specialized markets that are distinguished by several criteria, including a relatively more stable consumer base. Implementation of the prohibition on consumer payment of upfront points and fees without exercise of exemption authority could have further increased both the stability and size of this base, by enhancing consumer perceptions of the greater degree of transparency exhibited by small creditors in comparison to larger institutions in the provision of all financial services. Larger creditors, for example, would have an incentive to offset any risk to mortgage profits from the statutory ban on points and fees by charging additional service fees to borrowers, depositors, and other clients. Since small creditors engage in these activities to a lesser extent, implementation of the prohibition on consumer payment of upfront points and fees could have enhanced the favorable reputation of small creditors in all lines of their business, allowing them to preserve their relatively larger percentage of long-term consumer relationships while potentially increasing the size of all of the financial markets they serve.

Third, even in periods of significant interest rate volatility, small creditors often exhibit a relatively greater willingness to hold mortgages in portfolio rather than selling them in the secondary market, as do larger institutions. This propensity mitigates the need for small creditors to follow the practices imposed by the secondary market on larger creditors. Mortgage pooling, for example, which is necessary to securitization, requires larger creditors to focus on lending to consumers with relatively standard credit profiles. The comparative advantage of smaller creditors in serving consumers exhibiting a wider array of credit histories could conceivably increase when the variety of mortgage products offered by larger creditors decreases and, consequently, the value of diversity in consumers served increases.

b. Compensation Based on Transaction Terms

The final rule clarifies and revises restrictions on profits-based compensation from mortgage-related business profits for loan originators based on the analysis of the potential incentives that loan originators have to steer consumers to different transaction terms in a variety of contexts. As discussed in the section-by-section analysis, § 1026.3(d)(1)(iii) permits creditors or loan originators organizations to make contributions from mortgage-related profits to ''designated tax-advantaged plans'' as listed in that paragraph.

As discussed in the section-by-section analysis, § 1026.36(d)(1)(iii) permits creditors or loan originator organizations to make contributions from mortgage-related profits to 401(k) plans, and other ''designated tax-advantaged plans,'' such as Simplified Employee Pensions (SEPs) and savings incentive match plans for employees (SIMPLE plans), provided the contributions are not based on the terms of the individual loan originator's transactions. Section 1026.36(d)(1)(iv) permits creditors or loan originator organizations to pay compensation under non-deferred profits-based compensation plans from mortgage-related business profits if: (1) The individual loan originator is the loan originator for ten or fewer mortgage transactions during the preceding 12 months (a de minimis number of originations); or (2) the percentage of an individual loan originator's compensation under a non-deferred profits-based compensation plan is equal to or less than 10 percent of that individual loan originator's total compensation. While such contributions and bonuses can be funded from general mortgage profits, the amounts paid to individual loan originators cannot be based on the terms of the transactions that the individual had originated.

Benefits to Small Entities

Small entities have, through outreach and inquiries, expressed concern over the potential costs they could incur owing to their difficulty, particularly in contrast to large institutions, in interpreting the restrictions the existing rule imposes on methods of compensation for individual loan originators, such as compensation under non-deferred profits-based compensation plans paid to individual loan originators or compensation by creditors or loan originator organizations through designated tax-advantaged plans. Small entities will benefit, in both absolute and relative terms, from clarification regarding permissible forms of loan originator compensation. Such clarification will reduce legal and related costs of interpreting the existing rule and the risk of unintended violations of that regulation.

Small entities engaging in compensating individual loan originators through contributions to designated tax-advantaged plans in which the individual loan originators participate will also continue to benefit from this practice under the final rule. Those small entities that do not currently offer such plans would benefit, with the increased clarity of the final rule, from the opportunity to do so should they so choose.[194] For small entities that currently do not pay bonuses out of mortgage-related profits

[194] Some firms may choose not to offer such compensation. In certain circumstances an originating institution (perhaps unable to invest in sufficient management expertise) will see reduced profitability from adopting profits-based compensation plans.

because of uncertainty about the application of the existing rule, the final rule will allow these types of compensation up to the 10-percent cap or under the de minimis exception. A final benefit is provided to those small entities that have working for them individual loan originators who are the loan originators for no more than 10 transactions per year, owing to the de minimis provision in the final rule that exempts these employees from limitations on profits-based bonuses. The Bureau believes that small entities are more likely than larger institutions to have producing managers or other employees whose day-to-day responsibilities are diverse and fluid, in which case they are more likely to act as a loan originator on occasion outside of their primary or secondary responsibilities. As a result, small entities for which such individuals work, as well as the individuals themselves, would benefit from the de minimis exception to allow their participation in profits-based compensation from mortgage-related business profits for which they might otherwise not be eligible under the other restrictions in the final rule.

Costs to Small Entities

Small entities that currently compensate their individual loan originators through profits-based compensation, such as by compensation under a non-deferred profits-based compensation plan limited by the final rule, will incur compliance costs if they currently pay, or wish to pay in the future, compensation under a non-deferred profits-based compensation plan to individual loan originators outside of the 10-percent cap or the de minimis exception set forth in the final rule. Small entities that currently compensate individual loan originators through non-deferred profits-based compensation in excess of 10 percent of individual loan originators' total compensation might have to adjust their profits-based compensation to comply with the 10-percent total compensation test under the final rule. This cost to comply will likely be minimal to nominal, however, because the final rule allows firms to pay profits-based compensation from non-mortgage related business above the 10-percent limits so long as those profits are determined in accordance with reasonable accounting methods and the compensation is not based on the terms of that individual's residential mortgage transactions. Thus, this would presumably create a compliance cost only for small entities that do not currently utilize reasonable accounting methods for internal accounting or other purposes: For these entities, the costs of compliance with the final rule could include making needed revisions to internal accounting practices, re-negotiating the remuneration terms in the contracts of individual loan originators currently working for the small entity, and updating any other practices essential to these methods of compensation. Owing to their current usage of these compensation programs, these firms may encounter higher retention costs and possibly lower levels of ability on the part of new hires, relative to the average ability displayed by the loan originators they currently employ.

c. Loan Originator Qualification Requirements

The final rule implements a Dodd-Frank Act provision requiring both individual loan originators and loan originator organizations to be ''qualified'' and to include their license or registration numbers on loan documents. Loan originator organizations are required to ensure that individual loan originators who work for them are licensed or registered under the SAFE Act where applicable. Loan originator organizations and the individual loan originators that are primarily responsible for a particular transaction are required to list their license or registration numbers on key loan documents along with their names. Loan originator organizations are required to ensure that their loan originator employees meet applicable character, fitness, and criminal background check requirements.

Benefits to Small Entities

Benefits from an enhanced reputation among consumers will accrue to those small entities employing originators not currently required to be licensed under the SAFE Act. Increased consumer confidence in such institutions arises from the knowledge that the small entity has ensured that the loan originators it employs have satisfied training requirements commensurate with their responsibilities as originators and they have met the character, fitness, and criminal background check requirements similar to those specified for licensees in the SAFE Act.

Costs to Small Entities

The final rule requires small entities, such as many depositories and bona fide nonprofit organizations, to adopt standards similar to those of the SAFE Act in regard to ongoing training, and the satisfaction of character and fitness standards, including having no felony convictions within the previous seven years. The Bureau estimates the costs of compliance with these standards to include the cost of obtaining a criminal background check and credit reports for new hires and existing employees who were not screened at the time of hire, and the time involved in checking employment and character references of any such individuals and evaluating the information. The additional time and cost required to provide occasional, appropriate training to individual loan originators will vary as a consequence of the skill and experience level of those individuals.

The Bureau believes that virtually all small depositories and nonprofit organizations have already adopted such screening and training requirements as a matter of good business practice and the Bureau anticipates that the training that many individual originators employed by small depositories and nonprofits already receive will be adequate to meet the requirement. The Bureau expects that in no case would the training needed to satisfy the requirement be more comprehensive, time-consuming, or costly than the online training approved by the NMLSR to satisfy the continuing education requirement imposed under the SAFE Act on those individuals who are subject to state licensing.

The requirement to include the names and NMLSR identifiers of originators on loan documents may impose some additional costs relative to current practice. These costs, however, may be mitigated by the existing requirement of the Federal Housing Finance Agency to include the NMLSR numerical identifier of individual loan originators and loan originator organizations on all applications for Fannie Mae and Freddie Mac loans.

d. Other Provisions

The final rule adjusts existing rules governing compensation to loan originators in connection with closed-end mortgage transactions to implement Dodd-Frank Act amendments to TILA, to provide greater clarity on the 2010 Loan Originator Final Rule, and to provide loan originator increased flexibility to engage in certain compensation practices. These provisions prohibit the compensation of loan originators by both consumers and other persons in the same transaction. They also preserve the current prohibition on the payment or receipt of commissions or other compensation based on the ''transaction terms'' governing the mortgage loan or factors that, for purposes of compensation, serve an equivalent role and may consequently be regarded as ''proxies'' for any of these transactions terms. The final rule, however, clarifies the existing prohibition by providing a new and explicit definition of a ''term of a transaction'' and explicitly addresses the criteria that determine whether a factor appearing in the loan is prohibited by its role as a proxy for a loan term and serving as a basis for compensation.

The final rule also clarifies several additional aspects of compensation provided to a loan originator. First, the final rule revises the existing rule to allow ''broker splits'' by permitting a loan originator organization receiving compensation directly from a consumer in connection with a given transaction to pay and an individual loan originator to receive compensation in connection with this transaction (*e.g.,* a commission). Second, the final rule clarifies that payments to a loan originator paid on the consumer's behalf by a person other than a creditor or its affiliates, such as a non-creditor seller, home builder, home improvement contractor, or real estate broker, are considered compensation received directly from the consumer if they are made pursuant to an agreement between the consumer and the person other than the creditor or its affiliates. Third, the final rule allows reductions in loan originator compensation where there are unforeseen circumstances to defray the cost, in whole or part, of an increase in the actual settlement cost above an estimated settlement cost disclosed to the consumer pursuant to section 5(c) of RESPA or omitted from that disclosure.

These provisions will provide greater clarity and flexibility, relative to the statutory provisions of the Dodd-Frank Act, for the purposes of compliance with the final rule. They should lower the costs of compliance for small entities. The final rule's allowance of broker splits, for example, provides small entities a greater degree of flexibility in their choice of compensation practices than under the 2010 Loan Originator Rule. Small entities, by virtue of their size, often have a disadvantage in competing with larger institutions in the market for skilled labor. The final rule will, as a consequence, lower the overall costs incurred by the small entity in retaining the individual loan originators they currently employ as well as the hiring of new originators. Greater clarity provided by the final rule in the definition of a ''term of a transaction'' and by explicitly addressing factors on which compensation cannot be based because they are ''proxies'' for a term of a transaction, will significantly reduce the uncertainty faced by small entities in their adoption of compensation procedures and in negotiating compensation with individual loan originators. They also serve, at the same time, to reduce the risk to small entities, particularly in relation to large institutions employing specialized staff, of unintentional violations of prohibited compensation practices. The final rule also bestows a similar benefit to small entities, in regard to the risk and consequent costs of unintentional noncompliance, by clarifying the nature of payments to an individual originator from unaffiliated third parties in a loan transaction which serve as compensation paid by the consumer to that individual.

The final rule also implements the Dodd-Frank Act requirement that prohibits mandatory arbitration clauses in mortgage loan agreements. It also implements the Dodd-Frank Act requirement concerning waivers of Federal claims in court. Finally, the final rule implements the Dodd-Frank Act requirement that prohibit the financing of single-premium credit insurance. Firms may incur some costs to comply with each of these prohibitions, such as amending standard contract forms.

F. Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and the Type of Professional Skills Necessary for the Preparation of the Report or Record

Section 603(b)(4) of the RFA requires an estimate of the classes of small entities that will be subject to the requirements. The classes of small entities that will be subject to the reporting, recordkeeping, and compliance requirements of the final rule are the same classes of small entities that are identified above in part VIII.

Section 603(b)(4) of the RFA also requires an estimate of the type of professional skills necessary for the preparation of the reports or records. The Bureau anticipates that the professional skills required for compliance with the final rule are the same or similar to those required in the ordinary course of business of the small entities affected by the final rule. Compliance by the small entities that will be affected by the final rule will require continued performance of the basic functions that they perform today.

G. Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities

1. Upfront Points and Fees

The Dodd-Frank Act prohibits consumer payment of upfront points and fees in all residential mortgage loan transactions (as defined in the Dodd-Frank Act) except those where no one other than the consumer pays a loan originator compensation tied to the transaction (*e.g.,* a commission). As discussed in the Background and section-by-section analysis, the Bureau adopts in the final rule a complete exemption to the statutory ban on upfront points and fees under its Dodd-Frank Act authority to create such an exemption in the interest of consumers and in the public interest, and other authority. Specifically, the final rule amends § 1026.36(d)(2)(ii) to provide that a payment to a loan originator that is otherwise prohibited by section 129B(c)(2)(A) of TILA is nevertheless permitted pursuant to section 129B(c)(2)(B) of TILA, regardless of whether the consumer makes any upfront payment of discount points, origination points, or fees, as described in section 129B(c)(2)(B)(ii) of TILA, as long as the mortgage originator does not receive any compensation directly from the consumer as described in section 129B(c)(2)(B)(i) of TILA. The Bureau has attempted to mitigate the burden of the more limited exemption in the proposal that would have required creditors or loan originator organizations to generally make available an alternative loan without discount points or origination points or fees, where they offer a loan with discount points or origination points or fees.

2. Compensation Based on Transaction Terms

The final rule clarifies and revises restrictions on profits-based compensation from mortgage-related business profits for loan originators, depending on the potential incentives to steer consumers to different transaction terms. As discussed in the section-by-section analysis, the final rule permits creditors or loan origination organizations to make contributions from profits derived from mortgage-related business to 401(k) plans, and other ''designated tax-advantaged plans'' as long as the compensation is not based on the terms of that individual loan originator's residential mortgage loan transactions. Because these designated plans include Simplified Employee Pensions (SEPs) and savings incentive match plans for employees (SIMPLE plans) that may particularly benefit small entities who are eligible to set them up, the impact of this provision on small entities is minimized.

The final rule also permits creditors or loan originator organizations to pay non-deferred profits-based compensation from mortgage-related business profits if the compensation is not based on the terms of that individual loan originator's residential mortgage loan transactions and if: (1) The individual loan originator affected has been the loan originator for ten or fewer mortgage transactions during the prior 12 months; or (2) the percentage of an individual loan originator's compensation that may be attributable to the bonuses is equal to or less than 10 percent of that loan originator's total compensation. The Bureau attempted to minimize the burden of these requirements by modifying the final rule from the proposed requirements in two respects.

First, the Bureau is not adopting the proposed revenue test and is instead adopting the 10-percent total compensation test. The Bureau believes that, relative to the revenue test, the 10-percent total compensation test reduces the cost of the compensation restrictions to small entities. As described earlier in the section-by-section analysis, the Bureau received a number of comments asserting that the revenue test would disadvantage creditors and loan originator organizations that are monoline mortgage businesses. The revenue test would have effectively precluded monoline mortgage businesses from paying profits-based bonuses to their individual loan originators or making contributions to those individuals' non-designated plans because these institutions' mortgage-related revenues as a percentage of total revenues would always exceed 25 or 50 percent (the alternative thresholds proposed). A test focused on compensation at the individual loan originator level, rather than company-wide, would be available to all companies regardless of the diversity of their business lines. Further, as the Bureau noted in the Small Business Review Panel Outline (and as stated by at least one commenter), creditors and loan originator organizations that are monoline mortgage businesses disproportionately consist of small entities. Unlike the revenue test, the 10-percent total compensation test will place restrictions on profits-based compensation (such as non-deferred profits-based compensation) that are neutral across entity size. The Bureau also believes that the relative simplicity of the 10-percent total compensation test in comparison to the revenue test—*e.g.,* calculation of total revenues is not required—will also benefit small entities.

Second, the Bureau, as described in the section-by-section analysis above, has increased the threshold of the de minimis origination exception under § 1026.36(d)(1)(iv)(B)(*2*) from five to ten consummated transactions. As noted earlier in this FRFA, the Bureau believes that small entities are more likely than larger institutions to have producing managers or other employees whose day-to-day responsibilities are diverse and fluid, in which case they are more likely to act as loan originators on occasion outside of their primary or secondary responsibilities. As a result, small entities for which such individuals work, as well as the individuals themselves, would benefit from the de minimis exception to allow their participation in non-deferred profits-based compensation from mortgage-related business profits for which they might otherwise not be eligible under the other restrictions in the final rule. The final rule has expanded slightly the scope of this exception to capture potentially more individuals who work for covered persons, including small entities.

3. Broker Splits

The final rule revises the existing Loan Originator Rule to provide that if a loan originator organization receives compensation directly from a consumer in connection with a transaction, the loan originator organization may pay compensation in connection with the transaction (*e.g.,* a commission) to individual loan originators and the individual loan originators may receive compensation from the loan originator organization. As discussed in the section-by-section analysis, this mitigates the burden of the existing rule on loan originator organizations.

H. Description of the Steps the Agency Has Taken To Minimize Any Additional Cost of Credit for Small Entities

Section 603(d) of the RFA requires the Bureau to consult with small entities regarding the potential impact of the proposed rule on the cost of credit for small entities and related matters. 5 U.S.C. 603(d). To satisfy this statutory requirement, the Bureau notified the Chief Counsel on May 9, 2012, that the Bureau would collect the advice and recommendations of the same Small Entity Representatives identified in consultation with the Chief Counsel during the Small Business Review Panel process concerning any projected impact of the proposed rule on the cost of credit for small entities.[195] The Bureau sought information from the Small Entity Representatives during the Small Business Review Panel Outreach Meeting regarding the potential impact on the cost of business credit, since the Small Entity Representatives, as small providers of financial services, could also provide valuable input on any such impact related to the proposed rule.[196]

The Bureau had no evidence at the time of the Small Business Review Panel Outreach Meeting that the proposals then under consideration would result in an increase in the cost of business credit for small entities under any plausible economic conditions. The proposals under consideration at the time applied to consumer credit transactions secured by a mortgage, deed of trust, or other security interest on a residential dwelling or a residential real property that includes a dwelling, and the proposals would not apply to loans obtained primarily for business purposes.

At the Small Business Review Panel Outreach Meeting, the Bureau asked the Small Entity Representatives a series of questions regarding any potential increase in the cost of business credit. Specifically, the Small Entity Representatives were asked if they believed any of the proposals under consideration would impact the cost of credit for small entities and, if so, in what ways and whether there were any alternatives to the proposals under consideration that could minimize such costs while accomplishing the statutory objectives addressed by the proposal.[197] Although some Small Entity Representatives expressed the concern that any additional Federal regulations, in general, had the potential to increase credit and other costs, all Small Entity Representatives responding to these questions stated that the proposals under consideration in this rulemaking would have little to no impact on the cost of credit to small businesses. After receiving feedback from Small Entity Representatives at the Small Business Review Panel Outreach Meeting, the Bureau had no evidence that the proposed rule would result in an

[195] *See* 5 U.S.C. 603(d)(2)(A). The Bureau provided this notification as part of the notification and other information provided to the Chief Counsel with respect to the Small Business Review Panel process pursuant to section 609(b)(1) of the RFA.

[196] *See* 5 U.S.C. 603(d)(2)(B).

[197] *See* Final Panel Report available in the Proposed Rule Docket: Docket ID No. CFPB–2012–0037, *available at. http://www.regulations.gov/#!documentDetail;D=CFPB–2012–0037–0001.*

increase in the cost of credit for small business entities.

In the IRFA, the Bureau asked interested parties to provide data and other factual information regarding whether the proposed rule would have any impact on the cost of credit for small entities. The Bureau did not receive any comments on this issue. In summary, the Bureau believes that the Final Rule will leave the cost of credit paid by small entities unchanged from its current value and, as a consequence, avoid those additional costs to those entities, created by an inability to hedge mortgage risk and other restrictions, that are an inevitable consequence under the baseline.

IX. Paperwork Reduction Act

A. Overview

The Bureau's collection of information requirements contained in this rule, and identified as such, were submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) (Paperwork Reduction Act or PRA). Further, the PRA (44 U.S.C 3507(a), (a)(2) and (a)(3)) requires that a Federal agency may not conduct or sponsor a collection of information unless OMB approved the collection under the PRA and the OMB control number obtained is displayed. Notwithstanding any other provision of law, no person is required to comply with, or is subject to any penalty for failure to comply with, a collection of information does not display a currently valid OMB control number (44 U.S.C. 3512).

This Final Rule contains revised information collection requirements that have not been approved by the OMB and, therefore, are not effective until OMB approval is obtained. The information collection requirements contained in this rule are described below. The Bureau will publish a separate notice in the **Federal Register** announcing the submission of these information collection requirements to OMB as well as OMB's action on these submissions; including, the OMB control number and expiration date.

This rule amends 12 CFR Part 1026 (Regulation Z). Regulation Z currently contains collections of information approved by OMB, and the Bureau's OMB control number is 3170–0015 (Truth in Lending Act (Regulation Z) 12 CFR 1026). As described below, the rule amends certain collections of information currently in Regulation Z.

On September 7, 2012, a notice of proposed rulemaking was published in the **Federal Register** (77 FR 55271). In the proposed rule, the Bureau invited comment on: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (2) the accuracy of the estimated burden associated with the proposed collections of information; (3) how to enhance the quality, utility, and clarity of the information to be collected; and (4) how to minimize the burden of complying with the proposed collections of information, including the application of automated collection techniques or other forms of information technology. The comment period for the proposed rule expired on November 6, 2012. In conjunction with the notice of proposed rulemaking, the Bureau received one comment addressing the Bureau's PRA analysis. This comment, received from a nonprofit loan originator organization, related to the Bureau's estimated number of respondents and is discussed in section B(2)(b) below.

The title of this information collection is: Loan Originator Compensation. The frequency of response is on-occasion. The information collection required provides benefits for consumers and is mandatory. *See* 15 U.S.C. 1601, *et seq.* Because the Bureau does not collect any information under the rule, no issue of confidentiality arises. The likely respondents are commercial banks, savings institutions, credit unions, mortgage companies (non-bank creditors), mortgage brokers, and nonprofit organizations that make or broker closed-end mortgage loans for consumers.

Under the rule, the Bureau generally accounts for the paperwork burden associated with Regulation Z for the following respondents pursuant to its administrative enforcement authority: insured depository institutions with more than $10 billion in total assets, their depository institution affiliates, and certain non-depository loan originator organizations. The Bureau and the FTC generally both have administrative enforcement authority over non-depository institutions for Regulation Z. Accordingly, the Bureau has allocated to itself half of its estimated burden for non-depository institutions. Other Federal agencies, including the FTC, are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required, to use the Bureau's burden estimation methodology.

It should be noted that the Bureau's estimation of burdens arising from those provisions of the final rule regarding loan originator qualifications takes into account the prior screening activities in which, the Bureau believes, most loan originator organizations have previously engaged, including obtaining credit reports, criminal background checks, and information about prior administrative, civil, or criminal findings by any government jurisdiction actions. This estimation of burdens, consequently, avoids including any costs associated with performing criminal background, financial responsibility, character, and general fitness standards for individual loan originators that loan originator organizations had already hired and screened prior to the effective date of this final rule under the then-applicable statutory or regulatory background standards, except for those individual loan originators already employed but about whom the loan originator organization knows of reliable information indicating that the individual loan originator likely no longer meets the required standards, regardless of when that individual was hired and screened.[198]

Using the Bureau's burden estimation methodology, the total estimated burden for the approximately 22,800 institutions subject to the rule, including Bureau respondents,[199] is approximately 64,600 hours annually and 164,700 one-time hours. The aggregate estimates of total burden presented in this part IX are based on estimated costs that are averages across respondents. The Bureau expects that

[198] The final rule clarifies, in § 1026.36(f)(3)(i) and (ii) and in new comments 36(f)(3)(ii)–2 and 36(f)(3)(ii)–3, that these requirements apply for an individual that the loan originator organization hires on or after January 10, 2014, the effective date of these provisions, as well as for individuals hired prior to this date who were not screened under standards in effect at the time of hire.

[199] There are 153 depository institutions (and their depository affiliates) that are subject to the Bureau's administrative enforcement authority. In addition there are 146 privately insured credit unions that are subject to the Bureau's administrative enforcement authority. For purposes of this PRA analysis, the Bureau's respondents under Regulation Z are 135 depository institutions that originate closed-end mortgages; 77 privately insured credit unions that originate closed-end mortgages; an estimated 2,787 non-depository institutions that originate closed-end mortgages and that are subject to the Bureau's administrative enforcement authority, an assumed 230 not-for profit originators (which may overlap with the other non-depository creditors), and 8,051 loan originator organizations. Unless otherwise specified, all references to burden hours and costs for the Bureau respondents for the collection under Regulation Z are based on a calculation that includes one half of burden for all respondents except the depository institutions.

the amount of time required to implement each of the changes for a given institution may vary based on the size, complexity, and practices of the respondent.

B. Information Collection Requirements

1. Record Retention Requirements

Regulation Z currently requires creditors to create and maintain records to demonstrate their compliance with Regulation Z provisions regarding compensation paid to or received by a loan originator. As discussed above in part V, the final rule requires creditors to retain these records for a three-year period, rather than for a two-year period as currently required. The rule applies the same requirement to organizations when they act as a loan originator in a transaction, even if they do not act as a creditor in the transaction.

For the requirement extending the record retention requirement for creditors from two years, as currently provided in Regulation Z, to three years, the Bureau assumes that there is no additional marginal cost. For most, if not all firms, the required records are in electronic form. The Bureau believes that, as a consequence, all creditors should be able to use their existing recordkeeping systems to maintain the required documentation for mortgage origination records for one additional year at a negligible cost of investing in new storage facilities.

Loan originator organizations, but not creditors, will incur costs from the new requirement to retain records related to compensation. For the requirement that organizations retain records related to compensation on loan transactions, these firms will need to build the requisite reporting regimes. At some firms this may require the integration of information technology systems; for others simple reports can be generated from existing core systems.

For the roughly 8,000 Bureau respondents that are non-depository loan originator organizations but not creditors, the one-time burden is estimated to total approximately 163,400 hours, or approximately 20 hours per organization, to review the regulation and establish the requisite systems to retain compensation information. The Bureau estimates the requirement for these Bureau respondents to retain documentation of compensation arrangements is assumed to require 64,400 ongoing burden hours, or approximately 8 hours per organization, annually. The Bureau has allocated to itself one-half of this burden.

Those record-keeping requirements that would have arisen had the Bureau chosen to retain in its final rule the proposed requirement to make available a zero-zero alternative are now absent. The overall burden to covered persons created by this final rule, however, remains unchanged, since the Bureau found no additional cost or burden was created by that earlier provision.

2. Requirement To Obtain Criminal Background Checks, Credit Reports, and Other Information for Certain Individual Loan Originators

To the extent loan originator organizations hire new originators who are not required to be licensed under the SAFE Act, and who are not so licensed, the loan originator organizations are required to obtain a criminal background check and credit report for these individual loan originators. Loan originator organizations are also required to obtain from the NMLSR or individual loan originator information about any findings against such individual loan originator by a government jurisdiction. In general, the loan originator organizations that are subject to this requirement are depository institutions (including credit unions) and bona fide nonprofit organizations whose loan originators are not subject to State licensing because the State has determined to provide an exemption for bona fide nonprofit organizations and determined the organization to be a bona fide nonprofit organization. The burden of obtaining this information may be different for a depository institution than it is for a nonprofit organization because depository institutions already obtain criminal background checks for their loan originators to comply with Regulation G and have access to information about findings against such individual loan originator by a government jurisdiction through the NMLSR.

a. Credit Check

Both depository institutions and nonprofit organizations will incur costs related to obtaining credit reports for all loan originators that are hired or transfer into this function on or after January 10, 2014. For the estimated 370 Bureau respondents, which include depository institutions over $10 billion, their depository affiliates, and nonprofit nondepository organizations, the estimated one time burden is roughly 25 hours and the estimated on going burden is 90 hours. This includes the total burden for the depository institutions and one-half the estimated burdens for the nonprofit nondepository organizations.

b. Criminal Background Check

Nonprofit organizations will incur costs related to obtaining criminal background checks for all loan originators that are hired or transfer into this function on or after January 10, 2014. Depository institutions already obtain criminal background checks for each of their individual loan originators through the NMLSR for purposes of complying with Regulation G. A criminal background check provided by the NMLSR to the depository institution is sufficient to meet the requirement to obtain a criminal background check in this rule. Accordingly, the Bureau believes they will not incur any additional burden.

Non-depository loan originator organizations that do not have access to information about criminal history in the NMLSR, including bona fide nonprofit organizations, could satisfy the latter requirements by obtaining a national criminal background check.[200] For the assumed 200 nonprofit originators,[201] the one-time burden is estimated to be roughly 20 hours.[202] The ongoing cost to perform the check for new hires is estimated to be 10 hours annually. The Bureau has allocated to itself one-half of these burdens.

The Bureau did receive one comment from a nonprofit firm primarily involved in the purchase and rehabilitation of HUD–FHA REO homes, which queried the definition of a nonprofit firm used by the Bureau in its calculations. The Bureau included all affiliates and regional offices of a parent nonprofit firm in its original estimate of 200 such firms that would be covered by the rule. After receiving this comment, however, the Bureau engaged in extensive research in order to create,

[200] This check, more formally known as an individual's FBI Identification Record, uses the individual's fingerprint submission to collect information about prior arrests and, in some instances, federal employment, naturalization, or military service.

[201] The Bureau has not been able to determine how many loan originators organizations qualify as bona fide nonprofit organizations or how many of their employee loan originators are not subject to SAFE Act licensing. Accordingly, the Bureau has estimated these numbers.

[202] The organizations are also assumed to pay $50 to get a national criminal background check. Several commercial services offer an inclusive fee, ranging between $48.00 and $50.00, for fingerprinting, transmission, and FBI processing. Based on a sample of three FBI-approved services, accessed on 2012–08–02: Accurate Biometrics, available at: *http://www.accuratebiometrics.com/index.asp*; Daon Trusted Identity Servs., available at: *http://daon.com/prints*; and Fieldprint, *available at http://www.fieldprintfbi.com/FBISubPage_FullWidth.aspx?ChannelID=272.*

from information provided by government and private sources, a national census of nonprofit loan originators currently in operation. Such a census is currently unavailable from any public or private source. Based on this research, the Bureau found no evidence to support a change in its original estimate and continues to treat all affiliates and regional offices of a parent nonprofit firm as one respondent. The Bureau's research on the number of nonprofit firms covered by the rule is, however, ongoing.

c. Information About Findings Against the Individual by Government Jurisdictions

The information for employees of nonprofit organizations is generally not in the NMLSR. Accordingly, under the rule a nonprofit organization will have to obtain this information using individual statements concerning any prior administrative, civil, or criminal findings. For the employees of bona-fide nonprofit organizations, the Bureau estimates that no more than 10 percent have any such findings by a governmental jurisdiction to describe. The one-time burden is estimated to be 20 hours, and the annual burden to obtain the information from new hires is estimated to be two hours. The Bureau has allocated to itself one-half of these burdens.

C. Summary of Burden Hours

For all of the collections herein, the one-time burden for Bureau respondents is approximately 81,800 hours. The ongoing burden is approximately 32,300 hours.

The Consumer Financial Protection Bureau has a continuing interest in the public's opinions of our collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to:

The Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, or by the internet to *CFPB_Public_PRA@cfpb.gov.*

List of Subjects in 12 CFR Part 1026

Advertising, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

Authority and Issuance

For the reasons stated in the preamble, the Bureau amends Regulation Z, 12 CFR part 1026, as set forth below:

PART 1026—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 1026 continues to read as follows:

Authority: 12 U.S.C. 2601; 2603–2605, 2607, 2609, 2617, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*

■ 2. Section 1026.25, as amended in a final rule published January 30, 2013, is further amended by adding paragraph (c)(2) to read as follows:

§ 1026.25 Record retention.

* * * * *

(c) * * *

(2) *Records related to requirements for loan originator compensation.* Notwithstanding paragraph (a) of this section, for transactions subject to § 1026.36:

(i) A creditor shall maintain records sufficient to evidence all compensation it pays to a loan originator, as defined in § 1026.36(a)(1), and the compensation agreement that governs those payments for three years after the date of payment.

(ii) A loan originator organization, as defined in § 1026.36(a)(1)(iii), shall maintain records sufficient to evidence all compensation it receives from a creditor, a consumer, or another person; all compensation it pays to any individual loan originator, as defined in § 1026.36(a)(1)(ii); and the compensation agreement that governs each such receipt or payment, for three years after the date of each such receipt or payment.

* * * * *

■ 3. Section 1026.36 is amended by:

■ A. Revising the section heading, the heading of paragraph (a), and paragraph (a)(1);

■ B. Adding paragraphs (a)(3), (a)(4), (a)(5), and (b);

■ C. Revising paragraphs (d)(1), (d)(2), (e)(3)(i)(C), and (f); and

■ D. Adding paragraphs (g) through (j).

The additions and revisions read as follows:

§ 1026.36 Prohibited acts or practices and certain requirements for credit secured by a dwelling.

(a) *Definitions.* (1) *Loan originator.* (i) For purposes of this section, the term ''loan originator'' means a person who, in expectation of direct or indirect compensation or other monetary gain or for direct or indirect compensation or other monetary gain, performs any of the following activities: takes an application, offers, arranges, assists a consumer in obtaining or applying to obtain, negotiates, or otherwise obtains or makes an extension of consumer credit for another person; or through advertising or other means of communication represents to the public that such person can or will perform any of these activities. The term ''loan originator'' includes an employee, agent, or contractor of the creditor or loan originator organization if the employee, agent, or contractor meets this definition. The term ''loan originator'' includes a creditor that engages in loan origination activities if the creditor does not finance the transaction at consummation out of the creditor's own resources, including by drawing on a *bona fide* warehouse line of credit or out of deposits held by the creditor. All creditors that engage in any of the foregoing loan origination activities are loan originators for purposes of paragraphs (f) and (g) of this section. The term does not include:

(A) A person who does not take a consumer credit application or offer or negotiate credit terms available from a creditor, but who performs purely administrative or clerical tasks on behalf of a person who does engage in such activities.

(B) An employee of a manufactured home retailer who does not take a consumer credit application, offer or negotiate credit terms available from a creditor, or advise a consumer on credit terms (including rates, fees, and other costs) available from a creditor.

(C) A person that performs only real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless such person is compensated by a creditor or loan originator or by any agent of such creditor or loan originator for a particular consumer credit transaction subject to this section.

(D) A seller financer that meets the criteria in paragraph (a)(4) or (a)(5) of this section, as applicable.

(E) A servicer or servicer's employees, agents, and contractors who offer or negotiate terms for purposes of renegotiating, modifying, replacing, or subordinating principal of existing mortgages where consumers are behind in their payments, in default, or have a reasonable likelihood of defaulting or falling behind. This exception does not apply, however, to a servicer or servicer's employees, agents, and contractors who offer or negotiate a transaction that constitutes a refinancing under § 1026.20(a) or obligates a different consumer on the existing debt.

(ii) An ''individual loan originator'' is a natural person who meets the definition of ''loan originator'' in paragraph (a)(1)(i) of this section.

(iii) A ''loan originator organization'' is any loan originator, as defined in paragraph (a)(1)(i) of this section, that is not an individual loan originator.

* * * * *

(3) *Compensation.* The term ''compensation'' includes salaries, commissions, and any financial or similar incentive.

(4) *Seller financers; three properties.* A person (as defined in § 1026.2(a)(22)) that meets all of the following criteria is not a loan originator under paragraph (a)(1) of this section:

(i) The person provides seller financing for the sale of three or fewer properties in any 12-month period to purchasers of such properties, each of which is owned by the person and serves as security for the financing.

(ii) The person has not constructed, or acted as a contractor for the construction of, a residence on the property in the ordinary course of business of the person.

(iii) The person provides seller financing that meets the following requirements:

(A) The financing is fully amortizing.

(B) The financing is one that the person determines in good faith the consumer has a reasonable ability to repay.

(C) The financing has a fixed rate or an adjustable rate that is adjustable after five or more years, subject to reasonable annual and lifetime limitations on interest rate increases. If the financing agreement has an adjustable rate, the rate is determined by the addition of a margin to an index rate and is subject to reasonable rate adjustment limitations. The index the adjustable rate is based on is a widely available index such as indices for U.S. Treasury securities or LIBOR.

(5) *Seller financers; one property.* A natural person, estate, or trust that meets all of the following criteria is not a loan originator under paragraph (a)(1) of this section:

(i) The natural person, estate, or trust provides seller financing for the sale of only one property in any 12-month period to purchasers of such property, which is owned by the natural person, estate, or trust and serves as security for the financing.

(ii) The natural person, estate, or trust has not constructed, or acted as a contractor for the construction of, a residence on the property in the ordinary course of business of the person.

(iii) The natural person, estate, or trust provides seller financing that meets the following requirements:

(A) The financing has a repayment schedule that does not result in negative amortization.

(B) The financing has a fixed rate or an adjustable rate that is adjustable after five or more years, subject to reasonable annual and lifetime limitations on interest rate increases. If the financing agreement has an adjustable rate, the rate is determined by the addition of a margin to an index rate and is subject to reasonable rate adjustment limitations. The index the adjustable rate is based on is a widely available index such as indices for U.S. Treasury securities or LIBOR.

(b) *Scope.* Paragraph (c) of this section applies to closed-end consumer credit transactions secured by a consumer's principal dwelling. Paragraphs (d), (e), (f), (g), (h), and (i) of this section apply to closed-end consumer credit transactions secured by a dwelling. This section does not apply to a home equity line of credit subject to § 1026.40, except that paragraphs (h) and (i) of this section apply to such credit when secured by the consumer's principal dwelling. Paragraphs (d), (e), (f), (g), (h), and (i) of this section do not apply to a loan that is secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D).

* * * * *

(d) * * *

(1) *Payments based on a term of a transaction.* (i) Except as provided in paragraph (d)(1)(iii) or (iv) of this section, in connection with a consumer credit transaction secured by a dwelling, no loan originator shall receive and no person shall pay to a loan originator, directly or indirectly, compensation in an amount that is based on a term of a transaction, the terms of multiple transactions by an individual loan originator, or the terms of multiple transactions by multiple individual loan originators. If a loan originator's compensation is based in whole or in part on a factor that is a proxy for a term of a transaction, the loan originator's compensation is based on a term of a transaction. A factor that is not itself a term of a transaction is a proxy for a term of the transaction if the factor consistently varies with that term over a significant number of transactions, and the loan originator has the ability, directly or indirectly, to add, drop, or change the factor in originating the transaction.

(ii) For purposes of this paragraph (d)(1) only, a ''term of a transaction'' is any right or obligation of the parties to a credit transaction. The amount of credit extended is not a term of a transaction or a proxy for a term of a transaction, provided that compensation received by or paid to a loan originator, directly or indirectly, is based on a fixed percentage of the amount of credit extended; however, such compensation may be subject to a minimum or maximum dollar amount.

(iii) An individual loan originator may receive, and a person may pay to an individual loan originator, compensation in the form of a contribution to a defined contribution plan that is a designated tax-advantaged plan or a benefit under a defined benefit plan that is a designated tax-advantaged plan. In the case of a contribution to a defined contribution plan, the contribution shall not be directly or indirectly based on the terms of that individual loan originator's transactions. As used in this paragraph (d)(1)(iii), ''designated tax-advantaged plan'' means any plan that meets the requirements of Internal Revenue Code section 401(a), 26 U.S.C. 401(a); employee annuity plan described in Internal Revenue Code section 403(a), 26 U.S.C. 403(a); simple retirement account, as defined in Internal Revenue Code section 408(p), 26 U.S.C. 408(p); simplified employee pension described in Internal Revenue Code section 408(k), 26 U.S.C. 408(k); annuity contract described in Internal Revenue Code section 403(b), 26 U.S.C. 403(b); or eligible deferred compensation plan, as defined in Internal Revenue Code section 457(b), 26 U.S.C. 457(b).

(iv) An individual loan originator may receive, and a person may pay to an individual loan originator, compensation under a non-deferred profits-based compensation plan (*i.e.,* any arrangement for the payment of non-deferred compensation that is determined with reference to the profits of the person from mortgage-related business), provided that:

(A) The compensation paid to an individual loan originator pursuant to this paragraph (d)(1)(iv) is not directly or indirectly based on the terms of that individual loan originator's transactions that are subject to this paragraph (d); and

(B) At least one of the following conditions is satisfied:

(*1*) The compensation paid to an individual loan originator pursuant to this paragraph (d)(1)(iv) does not, in the aggregate, exceed 10 percent of the individual loan originator's total compensation corresponding to the time period for which the compensation under the non-deferred profits-based compensation plan is paid; or

(*2*) The individual loan originator was a loan originator for ten or fewer transactions subject to this paragraph (d) consummated during the 12-month period preceding the date of the compensation determination.

(2) *Payments by persons other than consumer.* (i) *Dual compensation.* (A) Except as provided in paragraph (d)(2)(i)(C) of this section, if any loan originator receives compensation directly from a consumer in a consumer credit transaction secured by a dwelling:

(*1*) No loan originator shall receive compensation, directly or indirectly, from any person other than the consumer in connection with the transaction; and

(*2*) No person who knows or has reason to know of the consumer-paid compensation to the loan originator (other than the consumer) shall pay any compensation to a loan originator, directly or indirectly, in connection with the transaction.

(B) Compensation received directly from a consumer includes payments to a loan originator made pursuant to an agreement between the consumer and a person other than the creditor or its affiliates, under which such other person agrees to provide funds toward the consumer's costs of the transaction (including loan originator compensation).

(C) If a loan originator organization receives compensation directly from a consumer in connection with a transaction, the loan originator organization may pay compensation to an individual loan originator, and the individual loan originator may receive compensation from the loan originator organization, subject to paragraph (d)(1) of this section.

(ii) *Exemption.* A payment to a loan originator that is otherwise prohibited by section 129B(c)(2)(A) of the Truth in Lending Act is nevertheless permitted pursuant to section 129B(c)(2)(B) of the Act, regardless of whether the consumer makes any upfront payment of discount points, origination points, or fees, as described in section 129B(c)(2)(B)(ii) of the Act, as long as the loan originator does not receive any compensation directly from the consumer as described in section 129B(c)(2)(B)(i) of the Act.

* * * * *

(e) * * *

(3) * * *

(i) * * *

(C) The loan with the lowest total dollar amount of discount points, origination points or origination fees (or, if two or more loans have the same total dollar amount of discount points, origination points or origination fees, the loan with the lowest interest rate that has the lowest total dollar amount of discount points, origination points or origination fees).

* * * * *

(f) *Loan originator qualification requirements.* A loan originator for a consumer credit transaction secured by a dwelling must, when required by applicable State or Federal law, be registered and licensed in accordance with those laws, including the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act, 12 U.S.C. 5102 *et seq.*), its implementing regulations (12 CFR part 1007 or part 1008), and State SAFE Act implementing law. To comply with this paragraph (f), a loan originator organization that is not a government agency or State housing finance agency must:

(1) Comply with all applicable State law requirements for legal existence and foreign qualification;

(2) Ensure that each individual loan originator who works for the loan originator organization is licensed or registered to the extent the individual is required to be licensed or registered under the SAFE Act, its implementing regulations, and State SAFE Act implementing law before the individual acts as a loan originator in a consumer credit transaction secured by a dwelling; and

(3) For each of its individual loan originator employees who is not required to be licensed and is not licensed as a loan originator pursuant to § 1008.103 of this chapter or State SAFE Act implementing law:

(i) Obtain for any individual whom the loan originator organization hired on or after January 10, 2014 (or whom the loan originator organization hired before this date but for whom there were no applicable statutory or regulatory background standards in effect at the time of hire or before January 10, 2014, used to screen the individual) and for any individual regardless of when hired who, based on reliable information known to the loan originator organization, likely does not meet the standards under § 1026.36(f)(3)(ii), before the individual acts as a loan originator in a consumer credit transaction secured by a dwelling:

(A) A criminal background check through the Nationwide Mortgage Licensing System and Registry (NMLSR) or, in the case of an individual loan originator who is not a registered loan originator under the NMLSR, a criminal background check from a law enforcement agency or commercial service;

(B) A credit report from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act (15 U.S.C. 1681a(p)) secured, where applicable, in compliance with the requirements of section 604(b) of the Fair Credit Reporting Act, 15 U.S.C. 1681b(b); and

(C) Information from the NMLSR about any administrative, civil, or criminal findings by any government jurisdiction or, in the case of an individual loan originator who is not a registered loan originator under the NMLSR, such information from the individual loan originator;

(ii) Determine on the basis of the information obtained pursuant to paragraph (f)(3)(i) of this section and any other information reasonably available to the loan originator organization, for any individual whom the loan originator organization hired on or after January 10, 2014 (or whom the loan originator organization hired before this date but for whom there were no applicable statutory or regulatory background standards in effect at the time of hire or before January 10, 2014, used to screen the individual) and for any individual regardless of when hired who, based on reliable information known to the loan originator organization, likely does not meet the standards under this § 1026.36(f)(3)(ii), before the individual acts as a loan originator in a consumer credit transaction secured by a dwelling, that the individual loan originator:

(A)(*1*) Has not been convicted of, or pleaded guilty or *nolo contendere* to, a felony in a domestic or military court during the preceding seven-year period or, in the case of a felony involving an act of fraud, dishonesty, a breach of trust, or money laundering, at any time;

(*2*) For purposes of this paragraph (f)(3)(ii)(A):

(*i*) A crime is a felony only if at the time of conviction it was classified as a felony under the law of the jurisdiction under which the individual was convicted;

(*ii*) Expunged convictions and pardoned convictions do not render an individual unqualified; and

(*iii*) A conviction or plea of guilty or *nolo contendere* does not render an individual unqualified under this § 1026.36(f) if the loan originator organization has obtained consent to employ the individual from the Federal Deposit Insurance Corporation (or the Board of Governors of the Federal Reserve System, as applicable) pursuant to section 19 of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. 1829, the National Credit Union Administration pursuant to section 205 of the Federal Credit Union Act (FCUA), 12 U.S.C. 1785(d), or the Farm Credit Administration pursuant to section 5.65(d) of the Farm Credit Act of 1971 (FCA), 12 U.S.C. 227a–14(d), notwithstanding the bars posed with respect to that conviction or plea by the

FDIA, FCUA, and FCA, as applicable; and

(B) Has demonstrated financial responsibility, character, and general fitness such as to warrant a determination that the individual loan originator will operate honestly, fairly, and efficiently; and

(iii) Provide periodic training covering Federal and State law requirements that apply to the individual loan originator's loan origination activities.

(g) *Name and NMLSR ID on loan documents.* (1) For a consumer credit transaction secured by a dwelling, a loan originator organization must include on the loan documents described in paragraph (g)(2) of this section, whenever each such loan document is provided to a consumer or presented to a consumer for signature, as applicable:

(i) Its name and NMLSR ID, if the NMLSR has provided it an NMLSR ID; and

(ii) The name of the individual loan originator (as the name appears in the NMLSR) with primary responsibility for the origination and, if the NMLSR has provided such person an NMLSR ID, that NMLSR ID.

(2) The loan documents that must include the names and NMLSR IDs pursuant to paragraph (g)(1) of this section are:

(i) The credit application;

(ii) [Reserved]

(iii) The note or loan contract; and

(iv) The security instrument.

(3) For purposes of this section, NMLSR ID means a number assigned by the Nationwide Mortgage Licensing System and Registry to facilitate electronic tracking and uniform identification of loan originators and public access to the employment history of, and the publicly adjudicated disciplinary and enforcement actions against, loan originators.

(h) *Prohibition on mandatory arbitration clauses and waivers of certain consumer rights.* (1) *Arbitration.* A contract or other agreement for a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling) may not include terms that require arbitration or any other non-judicial procedure to resolve any controversy or settle any claims arising out of the transaction. This prohibition does not limit a consumer and creditor or any assignee from agreeing, after a dispute or claim under the transaction arises, to settle or use arbitration or other non-judicial procedure to resolve that dispute or claim.

(2) *No waivers of Federal statutory causes of action.* A contract or other agreement relating to a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling) may not be applied or interpreted to bar a consumer from bringing a claim in court pursuant to any provision of law for damages or other relief in connection with any alleged violation of any Federal law. This prohibition does not limit a consumer and creditor or any assignee from agreeing, after a dispute or claim under the transaction arises, to settle or use arbitration or other non-judicial procedure to resolve that dispute or claim.

(i) *Prohibition on financing single-premium credit insurance.* (1) A creditor may not finance, directly or indirectly, any premiums or fees for credit insurance in connection with a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling). This prohibition does not apply to credit insurance for which premiums or fees are calculated and paid in full on a monthly basis.

(2) For purposes of this paragraph (i), ''credit insurance'':

(i) Means credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life, or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, but

(ii) Excludes credit unemployment insurance for which the unemployment insurance premiums are reasonable, the creditor receives no direct or indirect compensation in connection with the unemployment insurance premiums, and the unemployment insurance premiums are paid pursuant to a separate insurance contract and are not paid to an affiliate of the creditor.

(j) *Policies and procedures to ensure and monitor compliance.* (1) A depository institution must establish and maintain written policies and procedures reasonably designed to ensure and monitor the compliance of the depository institution, its employees, its subsidiaries, and its subsidiaries' employees with the requirements of paragraphs (d), (e), (f), and (g) of this section. These written policies and procedures must be appropriate to the nature, size, complexity, and scope of the mortgage lending activities of the depository institution and its subsidiaries.

(2) For purposes of this paragraph (j), ''depository institution'' has the meaning in section 1503(2) of the SAFE Act, 12 U.S.C. 5102(2). For purposes of this paragraph (j), ''subsidiary'' has the meaning in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813.

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■ 4. In Supplement I to Part 1026—Official Interpretations:

■ A. Under *Section 1026.25—Record Retention:*

■ i. Under *25(a) General rule,* paragraph 5 is removed.

■ ii. *25(c)(2) Records related to requirements for loan originator compensation* and paragraphs 1 and 2 are added.

■ B. The heading for *Section 1026.36* is revised.

■ C. Under newly designated *Section 1026.36:*

■ i. Paragraphs 1 and 2 are removed.

■ ii. The heading for *36(a)* is revised.

■ iii. Under newly designated *36(a):*

■ a. Paragraphs 1 and 4 are revised, and paragraph 5 is added.

■ b. *36(a)(4) Seller financers; three properties* and paragraphs 1 and 2 are added.

■ c. *36(a)(5) Seller financers; one property* and paragraph 1 are added.

■ iv. *36(b) Scope* and paragraph 1 are added.

■ v. Under *36(d) Prohibited payments to loan originators:*

■ a. Paragraph 1 is revised.

■ b. The heading for *36(d)(1)* is revised.

■ c. Under newly designated *36(d)(1),* paragraphs 1 through 8 are revised and paragraph 10 is added.

■ d. Under *36(d)(2) Payments by persons other than consumer,* paragraphs 1 and 2 are removed, and *36(d)(2)(i) Dual compensation* and paragraphs 1 and 2 are added.

■ vi. Under *36(e)(3) Loan options presented,* paragraph 3 is revised.

■ vii. *36(f) Loan originator qualification requirements* and *36(g) Name and NMLSR ID on loan documents* are added.

The revisions and additions read as follows:

Supplement I to Part 1026—Official Interpretations

* * * * *

Subpart D—Miscellaneous

§ 1026.25—Record Retention

* * * * *

25(c) Records Related to Certain Requirements for Mortgage Loans

25(c)(2) Records Related to Requirements for Loan Originator Compensation

1. *Scope of records of loan originator compensation.* Section 1026.25(c)(2)(i)

requires a creditor to maintain records sufficient to evidence all compensation it pays to a loan originator, as well as the compensation agreements that govern those payments, for three years after the date of the payments. Section 1026.25(c)(2)(ii) requires that a loan originator organization maintain records sufficient to evidence all compensation it receives from a creditor, a consumer, or another person and all compensation it pays to any individual loan originators, as well as the compensation agreements that govern those payments or receipts, for three years after the date of the receipts or payments.

i. *Records sufficient to evidence payment and receipt of compensation.* Records are sufficient to evidence payment and receipt of compensation if they demonstrate the following facts: The nature and amount of the compensation; that the compensation was paid, and by whom; that the compensation was received, and by whom; and when the payment and receipt of compensation occurred. The compensation agreements themselves are to be retained in all circumstances consistent with § 1026.25(c)(2)(i). The additional records that are sufficient necessarily will vary on a case-by-case basis depending on the facts and circumstances, particularly with regard to the nature of the compensation. For example, if the compensation is in the form of a salary, records to be retained might include copies of required filings under the Internal Revenue Code that demonstrate the amount of the salary. If the compensation is in the form of a contribution to or a benefit under a designated tax-advantaged retirement plan, records to be maintained might include copies of required filings under the Internal Revenue Code or applicable provisions of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.,* relating to the plans, copies of the plan and amendments thereto in which individual loan originators participate and the names of any loan originators covered by such plans, or determination letters from the Internal Revenue Service regarding such plans. If the compensation is in the nature of a commission or bonus, records to be retained might include a settlement agent ''flow of funds'' worksheet or other written record or a creditor closing instructions letter directing disbursement of fees at consummation. Where a loan originator is a mortgage broker, a disclosure of compensation or broker agreement required by applicable State law that recites the broker's total compensation for a transaction is a record of the amount actually paid to the loan originator in connection with the transaction, unless actual compensation deviates from the amount in the disclosure or agreement. Where compensation has been decreased to defray the cost, in whole or part, of an unforeseen increase in an actual settlement cost over an estimated settlement cost disclosed to the consumer pursuant to section 5(c) of RESPA (or omitted from that disclosure), records to be maintained are those documenting the decrease in compensation and reasons for it.

ii. *Compensation agreement.* For purposes of § 1026.25(c)(2), a compensation agreement includes any agreement, whether oral, written, or based on a course of conduct that establishes a compensation arrangement between the parties (*e.g.,* a brokerage agreement between a creditor and a mortgage broker, provisions of employment contracts between a creditor and an individual loan originator employee addressing payment of compensation). Where a compensation agreement is oral or based on a course of conduct and cannot itself be maintained, the records to be maintained are those, if any, evidencing the existence or terms of the oral or course of conduct compensation agreement. Creditors and loan originators are free to specify what transactions are governed by a particular compensation agreement as they see fit. For example, they may provide, by the terms of the agreement, that the agreement governs compensation payable on transactions consummated on or after some future effective date (in which case, a prior agreement governs transactions consummated in the meantime). For purposes of applying the record retention requirement to transaction-specific commissions, the relevant compensation agreement for a given transaction is the agreement pursuant to which compensation for that transaction is determined.

iii. *Three-year retention period.* The requirements in § 1026.25(c)(2)(i) and (ii) that the records be retained for three years after the date of receipt or payment, as applicable, means that the records are retained for three years after each receipt or payment, as applicable, even if multiple compensation payments relate to a single transaction. For example, if a loan originator organization pays an individual loan originator a commission consisting of two separate payments of $1,000 each on June 5 and July 7, 2014, then the loan originator organization is required to retain records sufficient to evidence the two payments through June 4, 2017, and July 6, 2017, respectively.

2. *Example.* An example of the application of § 1026.25(c)(2) to a loan originator organization is as follows: Assume a loan originator organization originates only transactions that are not subject to § 1026.36(d)(2), thus all of its origination compensation is paid exclusively by creditors that fund its originations. Further assume that the loan originator organization pays its individual loan originator employees commissions and annual bonuses. The loan originator organization must retain a copy of the agreement with any creditor that pays the loan originator organization compensation for originating consumer credit transactions subject to § 1026.36 and documentation evidencing the specific payment it receives from the creditor for each transaction originated. In addition, the loan originator organization must retain copies of the agreements with its individual loan originator employees governing their commissions and their annual bonuses and records of any specific commissions and bonuses paid.

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Subpart E—Special Rules for Certain Home Mortgage Transactions

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§ 1026.36—Prohibited Acts or Practices and Certain Requirements for Credit Secured by a Dwelling

36(a) Definitions

1. *Meaning of loan originator.* i. *General.* A. Section 1026.36(a) defines the set of activities or services any one of which, if done for or in the expectation of compensation or gain, makes the person doing such activities or performing such services a loan originator, unless otherwise excluded. The scope of activities covered by the term loan originator includes:

1. Referring a consumer to any person who participates in the origination process as a loan originator. Referring includes any oral or written action directed to a consumer that can affirmatively influence the consumer to select a particular loan originator or creditor to obtain an extension of credit when the consumer will pay for such credit. See comment 36(a)–4 with respect to certain activities that do not constitute referring.

2. Arranging a credit transaction, including initially contacting and orienting the consumer to a particular loan originator's or creditor's origination process or credit terms, assisting the consumer to apply for credit, taking an application, offering or negotiating credit terms, or otherwise obtaining or making an extension of credit.

3. Assisting a consumer in obtaining or applying for consumer credit by advising on specific credit terms (including rates, fees, and other costs), filling out an application form, preparing application packages (such as a credit application or pre-approval application or supporting documentation), or collecting application and supporting information on behalf of the consumer to submit to a loan originator or creditor. A person who, acting on behalf of a loan originator or creditor, collects information or verifies information provided by the consumer, such as by asking the consumer for documentation to support the information the consumer provided or for the consumer's authorization to obtain supporting documents from third parties, is not collecting information on behalf of the consumer. See also comment 36(a)–4.i through iv with respect to application-related administrative and clerical tasks and comment 36(a)–1.v with respect to third-party advisors.

4. Presenting for consideration by a consumer particular credit terms, or communicating with a consumer for the purpose of reaching a mutual understanding about prospective credit terms.

5. Advertising or communicating to the public that one can or will perform any loan origination services. Advertising the services of a third party that engages or intends to engage in loan origination activities does not make the advertiser a loan originator.

B. The term ''loan originator'' includes employees, agents, and contractors of a creditor as well as employees, agents, and contractors of a mortgage broker that satisfy this definition.

C. The term ''loan originator'' includes any creditor that satisfies the definition of loan originator but makes use of ''table funding'' by a third party. See comment 36(a)–1.ii discussing table funding. Solely for purposes of § 1026.36(f) and (g) concerning loan originator qualifications, the term loan originator includes any creditor that satisfies the definition of loan originator, even if the creditor does not make use of table funding. Such a person is a creditor, not a loan originator, for general purposes of this part, including the provisions of § 1026.36 other than § 1026.36(f) and (g).

D. A ''loan originator organization'' is a loan originator other than a natural person. The term includes any legal person or organization such as a sole proprietorship, trust, partnership, limited liability partnership, limited partnership, limited liability company, corporation, bank, thrift, finance company, or credit union. An ''individual loan originator'' is limited to a natural person. (Under § 1026.2(a)(22), the term ''person'' means a natural person or an organization.)

E. The term ''loan originator'' does not include consumers who obtain extensions of consumer credit on their own behalf.

ii. *Table funding.* Table funding occurs when the creditor does not provide the funds for the transaction at consummation out of the creditor's own resources, including, for example, by drawing on a *bona fide* warehouse line of credit or out of deposits held by the creditor. Accordingly, a table-funded transaction is consummated with the debt obligation initially payable by its terms to one person, but another person provides the funds for the transaction at consummation and receives an immediate assignment of the note, loan contract, or other evidence of the debt obligation. Although § 1026.2(a)(17)(i)(B) provides that a person to whom a debt obligation is initially payable on its face generally is a creditor, § 1026.36(a)(1) provides that, solely for the purposes of § 1026.36, such a person is also considered a loan originator. For example, if a person closes a transaction in its own name but does not fund the transaction from its own resources and assigns the transaction after consummation to the person providing the funds, it is considered a creditor for purposes of Regulation Z and also a loan originator for purposes of § 1026.36. However, if a person closes in its own name and finances a consumer credit transaction from the person's own resources, including drawing on a *bona fide* warehouse line of credit or out of deposits held by the person, and does not assign the loan at closing, the person is a creditor not making use of table funding but is included in the definition of loan originator for the purposes of § 1026.36(f) and (g) concerning loan originator qualifications.

iii. *Servicing.* A loan servicer or a loan servicer's employees, agents, or contractors that otherwise meet the definition of ''loan originator'' are excluded from the definition when modifying or offering to modify an existing loan on behalf of the current owner or holder of the loan (including an assignee or the servicer, if applicable). Other than § 1026.36(c), § 1026.36 applies to extensions of consumer credit. Thus, other than § 1026.36(c), § 1026.36 does not apply if a person renegotiates, modifies, replaces, or subordinates an existing obligation or its terms, unless the transaction constitutes a refinancing under § 1026.20(a) or obligates a different consumer on the existing debt.

iv. *Real estate brokerage.* The definition of ''loan originator'' does not include a person that performs only real estate brokerage activities (*e.g.,* does not perform mortgage broker or consumer credit referral activities or extend consumer credit) if the person is licensed or registered under applicable State law governing real estate brokerage, unless such person is paid by a loan originator or a creditor for a particular consumer credit transaction subject to § 1026.36. Such a person is not paid by a loan originator or a creditor if the person is paid by a loan originator or creditor on behalf of a buyer or seller solely for performing real estate brokerage activities. Such a person is not paid for a particular consumer credit transaction subject to § 1026.36 if the person is paid compensation by a loan originator or creditor, or affiliate of the loan originator or creditor, solely for performing real estate brokerage activities in connection with a property owned by that loan originator or creditor.

v. *Third-party advisors.* The definition of ''loan originator'' does not include bona fide third-party advisors such as accountants, attorneys, registered financial advisors, housing counselors, or others who do not receive compensation for engaging in loan origination activities. Advisory activity not constituting loan originator activity would include, for example, licensed accountants advising clients on tax implications of credit terms, registered financial advisors advising clients on potential effects of credit terms on client finances, HUD-approved housing counselors assisting consumers with understanding the credit origination process and various credit terms or collecting and organizing documents to support a credit application, or a licensed attorney assisting clients with consummating a real property transaction or with divorce, trust, or estate planning matters. Such a person, however, who advises a consumer on credit terms offered by either the person or the person's employer, or who receives compensation or other monetary gain, directly or indirectly, from the loan originator or creditor on whose credit offer the person advises a consumer, generally would be a loan originator. A referral by such a person does not make the person a loan originator, however, where the person neither receives nor expects any compensation from a loan originator or creditor for referring the consumer. HUD-approved housing counselors who simply assist a consumer in obtaining or applying to obtain consumer credit from a loan originator or creditor are not loan originators if the compensation is not contingent on referrals or on engaging in additional loan origination activities and either of two alternative conditions is satisfied: The first alternative condition is that the compensation is expressly permitted by applicable local, State, or Federal law that requires counseling and the counseling performed complies with such law (for example, § 1026.34(a)(5) and § 1026.36(k)). The second alternative condition is that the compensation is a fixed sum received from a creditor, loan originator, or the affiliate of a loan originator or a creditor as a result of agreements between creditors or loan originators and local, State, or Federal agencies. However, HUD-approved housing counselors are loan originators if, for example, they receive compensation that is contingent on referrals or on engaging in loan originator activity other than assisting a consumer in obtaining or applying to obtain consumer credit from a loan originator or creditor.

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4. *Managers, administrative and clerical staff.* For purposes of § 1026.36, managers, administrative and clerical staff, and similar individuals who are employed by (or contractor or agent of) a creditor or loan originator organization and take an application, offer, arrange, assist a consumer in obtaining or applying to obtain, negotiate, or otherwise obtain or make a particular extension of credit for another person are loan originators. The following examples describe activities that, in the absence of any other activities, do not render a manager, administrative or clerical staff member, or similar employee a loan originator:

i. *Application-related administrative and clerical tasks.* The definition of loan originator does not include persons who at the request of the consumer provide an application form to the consumer; accept a completed application form from the consumer; or, without assisting the consumer in completing the application, processing or analyzing the information, or discussing specific credit terms or products available from a creditor with the consumer, deliver the application to a loan originator or creditor. A person does not assist the consumer in completing the application if the person explains to the consumer filling out the application the contents of the application or where particular consumer information is to be provided, or generally describes the loan application process to a consumer without discussion of particular credit terms or products available from a creditor.

ii. *Responding to consumer inquiries and providing general information.* The definition of loan originator does not include persons who:

A. Provide general explanations, information, or descriptions in response to consumer queries, such as explaining credit terminology or lending policies or who confirm written offer terms already transmitted to the consumer;

B. As employees of a creditor or loan originator, provide loan originator or creditor contact information in response to the consumer's request, provided that the employee does not discuss particular credit terms available from a creditor and does not refer the consumer, based on the employee's assessment of the consumer's financial characteristics, to a particular loan originator or creditor seeking to originate particular credit transactions to consumers with those financial characteristics;

C. Describe other product-related services; or

D. Explain or describe the steps that a consumer would need to take to obtain an offer of credit, including providing general guidance on qualifications or criteria that would need to be met that is not specific to that consumer's circumstances.

iii. *Loan processing.* The definition of loan originator does not include persons who, acting on behalf of a loan originator or a creditor:

A. Compile and assemble credit application packages and supporting documentation;

B. Verify information provided by the consumer in a credit application such as by asking the consumer for supporting documentation or the consumer's authorization for the person to obtain supporting documentation from other persons;

C. Arrange for consummation of the credit transaction or for other aspects of the credit transaction process, including by communicating with a consumer about those arrangements, provided that any communication that includes a discussion about credit terms available from a creditor only confirms credit terms already agreed to by the consumer;

D. Provide a consumer with information unrelated to credit terms, such as the best days of the month for scheduling consummation; or

E. Communicate on behalf of a loan originator that a written credit offer has been sent to a consumer without providing any details of that offer.

iv. *Underwriting, credit approval, and credit pricing.* The definition of loan originator does not include persons who:

A. Receive and evaluate a consumer's information to make underwriting decisions on whether a consumer qualifies for an extension of credit and communicate decisions to a loan originator or creditor, provided that only a loan originator communicates such underwriting decisions to the consumer;

B. Approve credit terms or set credit terms available from the creditor in offer or counter-offer situations, provided that only a loan originator communicates to or with the consumer regarding these specific credit terms, an offer, or provides or engages in negotiation, a counter-offer, or approval conditions; or

C. Establish credit pricing that the creditor offers generally to the public, via advertisements or other marketing or via other persons that are loan originators.

v. *Producing managers.* Managers that work for creditors or loan originator organizations sometimes engage themselves in loan origination activities, as set forth in the definition of loan originator in § 1026.36(a)(1)(i) (such managers are sometimes referred to as ''producing managers''). The definition of loan originator includes persons, including managers, who are employed by a creditor or loan originator organization and take an application, offer, arrange, assist a consumer with obtaining or applying to obtain, negotiate, or otherwise obtain or make a particular extension of credit for another person, even if such persons are also employed by the creditor or loan originator organization to perform duties that are not loan origination activities. Thus, such producing managers are loan originators.

5. *Compensation.* i. *General.* For purposes of § 1026.36, compensation is defined in § 1026.36(a)(3) as salaries, commissions, and any financial or similar incentive. For example, the term ''compensation'' includes:

A. An annual or other periodic bonus; or

B. Awards of merchandise, services, trips, or similar prizes.

ii. *Name of fee.* Compensation includes amounts the loan originator retains and is not dependent on the label or name of any fee imposed in connection with the transaction. For example, if a loan originator imposes a ''processing fee'' in connection with the transaction and retains such fee, it is compensation for purposes of § 1026.36, including § 1026.36(d) and (e), whether the originator expends the time to process the consumer's application or uses the fee for other expenses, such as overhead.

iii. *Amounts for third-party charges.* Compensation does not include amounts the loan originator receives as payment for bona fide and reasonable charges, such as credit reports, where those amounts are passed on to a third party that is not the creditor, its affiliate, or the affiliate of the loan originator. *See* comment 36(a)–5.v.

iv. *Amounts for charges for services that are not loan origination activities.* A. Compensation does not include:

1. A payment received by a loan originator organization for bona fide and reasonable charges for services it performs that are not loan origination activities;

2. A payment received by an affiliate of a loan originator organization for bona fide and reasonable charges for services it performs that are not loan origination activities; or

3. A payment received by a loan originator organization for bona fide and reasonable charges for services that are not loan origination activities where those amounts are not retained by the loan originator but are paid to the creditor, its affiliate, or the affiliate of the loan originator organization. *See* comment 36(a)–5.v.

B. Compensation includes any salaries, commissions, and any financial or similar incentive, regardless of whether it is labeled as payment for services that are not loan origination activities.

C. Loan origination activities for purposes of this comment means activities described in § 1026.36(a)(1)(i) (*e.g.,* taking an application, offering, arranging, negotiating, or otherwise obtaining an extension of consumer credit for another person) that would make a person performing those activities for compensation a loan originator as defined in § 1026.36(a)(1)(i).

v. *Amounts that exceed the actual charge for a service.* In some cases, amounts received by the loan originator organization for payment for third-party charges described in comment 36(a)–5.iii or payment for services to the creditor, its affiliates, or the affiliates of the loan originator organization described in comment 36(a)–5.iv.A.*3* may exceed the actual charge because, for example, the loan originator organization cannot determine with accuracy what the actual charge will be when it is imposed and instead uses average charge pricing (in accordance with the Real Estate Settlement Procedures Act). In such a case, the difference retained by the loan originator organization is not compensation if the charge imposed on the consumer or collected from a person other than the consumer was bona fide and reasonable and also complies with State and other applicable law. On the other hand, if the loan originator organization marks up the charge (a practice known as ''upcharging''), and the originator retains the difference between the actual charge and the marked-up charge, the amount retained is compensation for purposes of § 1026.36, including § 1026.36(d) and (e). For example:

A. Assume a loan originator organization receives compensation directly from either a consumer or a creditor. Further assume the loan originator organization uses average charge pricing in accordance with the Real Estate Settlement Procedures Act and, based on its past average cost for credit reports, charges the consumer $25 for a credit report provided by a third party. Under the loan originator organization's agreement with the consumer reporting agency, the cost of the credit report is to be paid in a month-end bill and will vary between $15 and $35 depending on how many credit reports the originator obtains that month. Assume the $25 for the credit report is paid by the consumer or is paid by the creditor with proceeds from a rebate. At the end of the month, the cost for the credit report is determined to be $15 for this consumer's transaction, based on the loan originator organization's credit report volume that month. In this case, the $10 difference between the $25 credit report fee imposed on the consumer and the actual $15 cost for the credit report is not compensation for purposes of § 1026.36, even though the $10 is retained by the loan originator organization.

B. Using the same example as in comment 36(a)–5.v.A, the $10 difference would be compensation for purposes of § 1026.36 if the price for a credit report varies between $10 and $15.

vi. *Returns on equity interests and dividends on equity holdings.* The term ''compensation'' for purposes of § 1026.36(d) and (e) also includes, for example, awards of stock, stock options and equity interests. Thus, the awarding of stock, stock options, or equity interests to loan originators is subject to the restrictions in § 1026.36(d) and (e). For example, a person may not award additional stock or a preferable type of equity interest to a loan originator based on the terms of a consumer credit transaction subject to § 1026.36 originated by that loan originator. However, bona fide returns or dividends paid on stock or other equity holdings, including those paid to owners or shareholders of a loan originator organization who own such stock or equity interests, are not compensation for purposes of § 1026.36(d) and (e). Bona fide returns or dividends are those returns and dividends that are paid pursuant to documented ownership or equity interests and that are not functionally equivalent to compensation. Ownership and equity interests must be bona fide. Bona fide ownership and equity interests are allocated according to a loan originator's respective capital contribution where the allocation is not a mere subterfuge for the payment of compensation based on terms of a transaction. Ownership and equity interests also are not bona fide if the formation or maintenance of the business from which returns or dividends are paid is a mere subterfuge for the payment of compensation based on the terms of a transaction. For example, assume that three individual loan originators form a loan originator organization that is a limited liability company (LLC). The three individual loan originators are members of the LLC, and the LLC agreement governing the loan originator organization's structure calls for regular distributions based on the members' respective equity interests. If the members' respective equity interests are allocated based on the members' terms of transactions, rather than according to their respective capital contributions, then distributions based on such equity interests are not bona fide and, thus, are compensation for purposes of § 1026.36(d) and (e).

36(a)(4) Seller Financers; Three Properties

1. *Reasonable ability to repay safe harbors.* A person in good faith determines that the consumer to whom the person extends seller financing has a reasonable ability to repay the obligation if the person complies with § 1026.43(c) of this part or complies with the alternative criteria discussed in this comment. If the consumer intends to make payments from income, the person considers evidence of the consumer's current or reasonably expected income. If the consumer intends to make payments with income from employment, the person considers the consumer's earnings, which may be reflected in payroll statements or earnings statements, IRS Form W–2s or similar IRS forms used for reporting wages or tax withholding, or military

Leave and Earnings Statements. If the consumer intends to make payments from other income, the person considers the consumer's income from sources such as a Federal, State, or local government agency providing benefits and entitlements. If the consumer intends to make payments from income earned from assets, the person considers the relevant assets, such as funds held in accounts with financial institutions, equity ownership interests, or rental property. However, the value of the dwelling that secures the financing does not constitute evidence of the consumer's ability to repay. In considering these and other potential sources of income to determine in good faith that the consumer has a reasonable ability to repay the obligation, the person making that determination may rely on copies of tax returns the consumer filed with the Internal Revenue Service or a State taxing authority.

2. *Adjustable rate safe harbors.* i. *Annual rate increase.* An annual rate increase of two percentage points or less is reasonable.

ii. *Lifetime increase.* A lifetime limitation of an increase of six percentage points or less, subject to a minimum floor of the person's choosing and maximum ceiling that does not exceed the usury limit applicable to the transaction, is reasonable.

36(a)(5) Seller Financers; One Property

1. *Adjustable rate safe harbors.* For a discussion of reasonable annual and lifetime interest rate increases, see comment 36(a)(4)–2.

36(b) Scope.

1. *Scope of coverage.* Section 1026.36(c) applies to closed-end consumer credit transactions secured by a consumer's principal dwelling. Paragraphs (h) and (i) of § 1026.36 apply to home equity lines of credit under § 1026.40 secured by a consumer's principal dwelling. Paragraphs (d), (e), (f), (g), (h), and (i) of § 1026.36 apply to closed-end consumer credit transactions secured by a dwelling. Closed-end consumer credit transactions include transactions secured by first or subordinate liens, and reverse mortgages that are not home equity lines of credit under § 1026.40. See § 1026.36(b) for additional restrictions on the scope of § 1026.36, and §§ 1026.1(c) and 1026.3(a) and corresponding commentary for further discussion of extensions of credit subject to Regulation Z.

* * * * *

36(d) Prohibited Payments to Loan Originators

1. *Persons covered.* Section 1026.36(d) prohibits any person (including a creditor) from paying compensation to a loan originator in connection with a covered credit transaction, if the amount of the payment is based on a term of a transaction. For example, a person that purchases an extension of credit from the creditor after consummation may not compensate the loan originator in a manner that violates § 1026.36(d).

* * * * *

36(d)(1) Payments Based on a Term of a Transaction

1. *Compensation that is ''based on'' a term of a transaction.* i. *Objective facts and circumstances.* Whether compensation is ''based on'' a term of a transaction does not require a comparison of multiple transactions or proof that any person subjectively intended that there be a relationship between the amount of the compensation paid and a transaction term. Instead, the determination is based on the objective facts and circumstances indicating that compensation would have been different if a transaction term had been different. Generally, when there is a compensation policy in place and the objective facts and circumstances indicate the policy was followed, the determination of whether compensation would have been different if a transaction term had been different is made by analysis of the policy. In the absence of a compensation policy, or when a compensation policy is not followed, the determination may be made based on a comparison of transactions originated and the amounts of compensation paid.

ii. *Single or multiple transactions.* The prohibition on payment and receipt of compensation under § 1026.36(d)(1)(i) encompasses compensation that directly or indirectly is based on the terms of a single transaction of a single individual loan originator, the terms of multiple transactions of that single individual loan originator, or the terms of transactions of multiple individual loan originators. Compensation to a loan originator that is based upon profits determined with reference to a mortgage-related business is considered compensation that is based on the terms of transactions of multiple individual loan originators. For exceptions permitting compensation based upon profits determined with reference to mortgage-related business pursuant to either a designated tax-advantaged plan or a non-deferred profits-based compensation plan, see comment 36(d)(1)–3.i and ii. For clarification about ''mortgage-related business,'' see comment 36(d)(1)–3.v.E.

A. Assume that a creditor pays a bonus to an individual loan originator out of a bonus pool established with reference to the creditor's profits and the profits are determined with reference to the creditor's revenue from origination of closed-end consumer credit transactions secured by a dwelling. In such instance, the bonus is considered compensation under a non-deferred profits-based compensation plan. Therefore, the bonus is prohibited under § 1026.36(d)(1)(i), unless it is otherwise permitted under § 1026.36(d)(1)(iv).

B. Assume that an individual loan originator's employment contract with a creditor guarantees a quarterly bonus in a specified amount conditioned upon the individual loan originator meeting certain performance benchmarks (*e.g.,* volume of originations monthly). A bonus paid following the satisfaction of those contractual conditions is not directly or indirectly based on the terms of a transaction under 1026.36(d)(1)(i), as clarified by this comment 36(d)(1)–1.ii, because the creditor is obligated to pay the bonus, in the specified amount, regardless of the terms of transactions of the individual loan originator or multiple individual loan originators and the effect of those multiple terms of transactions on the creditor's profits. Because this type of bonus is not directly or indirectly based on a term of a transaction, as described in § 1026.36(d)(1)(i) (as clarified by comment 36(d)(1)–1.ii), it is not subject to the 10-percent total compensation limit described in § 1026.36(d)(1)(iv)(B)(*1*).

iii. *Transaction term defined.* A ''term of a transaction'' under § 1026.36(d)(1)(ii) is any right or obligation of any of the parties to a credit transaction. A ''credit transaction'' is the operative acts (*e.g.,* the consumer's purchase of certain goods or services essential to the transaction) and written and oral agreements that, together, create the consumer's right to defer payment of debt or to incur debt and defer its payment. For the purposes of § 1026.36(d)(1)(ii), this definition includes:

A. The rights and obligations, or part of any rights or obligations, memorialized in a promissory note or other credit contract, as well as the security interest created by a mortgage, deed of trust, or other security instrument, and in any document incorporated by reference in the note, contract, or security instrument;

B. The payment of any loan originator or creditor fees or charges for the credit, or for a product or service provided by the loan originator or creditor related to the extension of that credit, imposed on the consumer, including any fees or charges financed through the interest rate; and

C. The payment of any fees or charges imposed on the consumer, including any fees or charges financed through the interest rate, for any product or service required to be obtained or performed as a condition of the extension of credit.

D. The fees and charges described above in paragraphs B and C can only be a term of a transaction if the fees or charges are required to be disclosed in either the Good Faith Estimate and the HUD–1 or HUD–1A (and subsequently in any integrated disclosures promulgated by the Bureau under TILA section 105(b) (15 U.S.C. 1604(b)) and RESPA section 4 (12 U.S.C. 2603) as amended by sections 1098 and 1100A of the Dodd-Frank Act).

2. *Compensation that is or is not based on a term of a transaction or a proxy for a term of a transaction.* Section 1026.36(d)(1) does not prohibit compensating a loan originator differently on different transactions, provided the difference is not based on a term of a transaction or a proxy for a term of a transaction. The rule prohibits compensation to a loan originator for a transaction based on, among other things, that transaction's interest rate, annual percentage rate, collateral type (*e.g.,* condominium, cooperative, detached home, or manufactured housing), or the existence of a prepayment penalty. The rule also prohibits compensation to a loan originator that is based on any factor that is a proxy for a term of a transaction. Compensation paid to a loan originator organization directly by a consumer in a transaction is not prohibited by § 1026.36(d)(1) simply because that compensation itself is a term of the transaction. Nonetheless, that compensation may not be based on any other term of the transaction or a proxy for any other term of the transaction. In addition, in a transaction where a loan originator organization is paid compensation directly by a consumer, compensation paid by the loan originator organization to individual loan originators is not prohibited by § 1026.36(d)(1) simply because it is based on the amount of compensation paid directly by the consumer to the loan originator organization but the compensation to the individual loan originator may not be based on any other term of the transaction or proxy for any other term of the transaction.

i. *Permissible methods of compensation.* Compensation based on the following factors is not compensation based on a term of a transaction or a proxy for a term of a transaction:

A. The loan originator's overall dollar volume (*i.e.,* total dollar amount of credit extended or total number of transactions originated), delivered to the creditor. See comment 36(d)(1)–9 discussing variations of compensation based on the amount of credit extended.

B. The long-term performance of the originator's loans.

C. An hourly rate of pay to compensate the originator for the actual number of hours worked.

D. Whether the consumer is an existing customer of the creditor or a new customer.

E. A payment that is fixed in advance for every loan the originator arranges for the creditor (*e.g.,* $600 for every credit transaction arranged for the creditor, or $1,000 for the first 1,000 credit transactions arranged and $500 for each additional credit transaction arranged).

F. The percentage of applications submitted by the loan originator to the creditor that results in consummated transactions.

G. The quality of the loan originator's loan files (*e.g.,* accuracy and completeness of the loan documentation) submitted to the creditor.

ii. *Proxies for terms of a transaction.* If the loan originator's compensation is based in whole or in part on a factor that is a proxy for a term of a transaction, then the loan originator's compensation is based on a term of a transaction. A factor (that is not itself a term of a transaction) is a proxy for a term of a transaction if the factor consistently varies with a term or terms of the transaction over a significant number of transactions, and the loan originator has the ability, directly or indirectly, to add, drop, or change the factor when originating the transaction. For example:

A. Assume a creditor pays a loan originator a higher commission for transactions to be held by the creditor in portfolio than for transactions sold by the creditor into the secondary market. The creditor holds in portfolio only extensions of credit that have a fixed interest rate and a five-year term with a final balloon payment. The creditor sells into the secondary market all other extensions of credit, which typically have a higher fixed interest rate and a 30-year term. Thus, whether an extension of credit is held in portfolio or sold into the secondary market for this creditor consistently varies with the interest rate and whether the credit has a five-year term or a 30-year term (which are terms of the transaction) over a significant number of transactions. Also, the loan originator has the ability to change the factor by, for example, advising the consumer to choose an extension of credit a five-year term. Therefore, under these circumstances, whether or not an extension of credit will be held in portfolio is a proxy for a term of a transaction.

B. Assume a loan originator organization pays loan originators higher commissions for transactions secured by property in State A than in State B. For this loan originator organization, over a significant number of transactions, transactions in State B have substantially lower interest rates than transactions in State A. The loan originator, however, does not have any ability to influence whether the transaction is secured by property located in State A or State B. Under these circumstances, the factor that affects compensation (the location of the property) is not a proxy for a term of a transaction.

iii. *Pooled compensation.* Section 1026.36(d)(1) prohibits the sharing of pooled compensation among loan originators who originate transactions with different terms and are compensated differently. For example, assume that Loan Originator A receives a higher commission than Loan Originator B and that loans originated by Loan Originator A generally have higher interest rates than loans originated by Loan Originator B. Under these circumstances, the two loan originators may not share pooled compensation because each receives compensation based on the terms of the transactions they collectively make.

3. *Interpretation of § 1026.36(d)(1)(iii) and (iv).* Subject to certain restrictions, § 1026.36(d)(1)(iii) and § 1026.36(d)(1)(iv) permit contributions to or benefits under designated tax-advantaged plans and compensation under a non-deferred profits-based compensation plan even if the contributions, benefits, or compensation, respectively, are based on the terms of multiple transactions of multiple individual loan originators.

i. *Designated tax-advantaged plans.* Section 1026.36(d)(1)(iii) permits an individual loan originator to receive, and a person to pay, compensation in the form of contributions to a defined contribution plan or benefits under a defined benefit plan provided the plan is a designated tax-advantaged plan (as defined in § 1026.36(d)(1)(iii)), even if contributions to or benefits under such plans are directly or indirectly based on the terms of multiple transactions of multiple individual loan originators. In the case of a designated tax-advantaged plan that is a defined contribution plan, section 1026.36(d)(1)(iii) does not permit the amount of the contribution to be directly or indirectly based on the terms of that individual loan originator's transactions. A defined contribution plan has the meaning set forth in Internal Revenue Code section 414(i), 26 U.S.C. 414(i). A defined benefit plan has the meaning set forth in Internal Revenue Code section 414(j), 26 U.S.C. 414(j).

ii. *Non-deferred profits-based compensation plans.* As used in § 1026.36(d)(1)(iv), a ''non-deferred profits-based compensation plan'' is any compensation arrangement where an individual loan originator may be paid variable, additional compensation based in whole or in part on the mortgage-related profits of the person paying the compensation, any affiliate, or a business unit within the organizational structure of the person or the affiliate, as applicable (*i.e.,* depending on the level within the person's or affiliate's organization at which the non-deferred profits-based compensation plan is established). A non-deferred profits-based compensation plan does not include a designated tax-advantaged plan or other forms of deferred compensation that are not designated tax-advantaged plans, such as those created pursuant to Internal Revenue Code section 409A. Thus, if contributions to or benefits under a designated tax-advantaged plan or other form of deferred compensation are determined based upon the mortgage-related profits of the person making the contribution, the contribution or benefits are not permitted by § 1026.36(d)(1)(iv) (although, in the case of contribution to or benefits under a designated tax-advantaged plan, the benefits or contributions may be permitted by § 1026.36(d)(iii)). Under a non-deferred profits-based compensation plan, the individual loan originator may, for example, be paid directly in cash, stock, or other non-deferred compensation, and the amount to be paid out from the non-deferred profits-based compensation plan and the distributions to the individual loan originators may be determined by a fixed formula or may be at the discretion of the person (*e.g.,* the person may elect not to pay compensation under a non-deferred profits-based compensation plan in a given year), provided the distributions are not directly or indirectly based on the terms of the individual loan originator's transactions. As used in § 1026.36(d)(1)(iv) and this commentary, non-deferred profits-based compensation plans include, without limitation, bonus pools, profits pools, bonus plans, and profit-sharing plans. Compensation under a non-deferred profits-based compensation plan could include, without limitation, annual or periodic bonuses, or awards of merchandise, services, trips, or similar prizes or incentives where the bonuses, contributions, or awards are determined with reference to the profitability of the person, business unit, or affiliate, as applicable. As used in § 1026.36(d)(1)(iv) and this commentary, a business unit is a division, department, or segment within the overall organizational structure of the person or the person's affiliate that performs discrete business functions and that the person or the affiliate treats separately for accounting or other organizational purposes. For example, a creditor that pays its individual loan originators bonuses at the end of a calendar year based on the creditor's average net return on assets for the calendar year is operating a profits-based compensation plan under § 1026.36(d)(1)(iv). A bonus that is paid to an individual loan originator from a source other than a non-deferred profits-based compensation plan, such as a retention bonus budgeted for in advance or a performance bonus paid out of a bonus pool set aside at the beginning of the company's annual accounting period as part of the company's operating budget, does not violate the prohibition on payment of compensation based on the terms of transactions of multiple individual loan originators under § 1026.36(d)(1)(i), as clarified by comment 36(d)(1)–1.ii; therefore, § 1026.36(d)(1)(iv) does not apply to such bonuses.

iii. *Compensation that is not directly or indirectly based on the terms of transactions of multiple individual loan originators.* The compensation arrangements addressed in § 1026.36(d)(1)(iii) and (iv) are permitted even if they are directly or indirectly based on the terms of transactions of multiple individual loan originators. See comment 36(d)(1)–1.i and ii.A for additional interpretation. If a loan originator organization's revenues are exclusively derived from transactions subject to § 1026.36(d) (whether paid by creditors, consumers, or both) and that loan originator organization pays its individual loan originators a bonus under a non-deferred profits-based compensation plan, the bonus is not directly or indirectly based on the terms of multiple transactions of multiple individual loan originators if § 1026.36(d)(1)(i) is otherwise complied with.

iv. *Compensation based on terms of an individual loan originator's transactions.* Under both § 1026.36(d)(1)(iii), with regard to contributions made to a defined contribution plan that is a designated tax-advantaged plan, and § 1026.36(d)(1)(iv), with regard to compensation under a non-deferred profits-based compensation plan, the payment of compensation to an individual loan originator may not be directly or indirectly based on the terms of that individual loan originator's transaction or transactions. Consequently, the compensation payment may not take into account, for example, the fact that the individual loan originator's transactions during the relevant calendar year had higher interest rate spreads over the creditor's minimum acceptable rate on average than similar transactions for other individual loan originators employed by the creditor.

v. *Compensation under non-deferred profits-based compensation plans.* Assuming that the conditions in § 1026.36(d)(1)(iv)(A) are met, § 1026.36(d)(1)(iv)(B)(*1*) permits certain compensation to an individual loan originator under a non-deferred profits-based compensation plan. Specifically, if the compensation is determined with reference to the profits of the person from mortgage-related business, compensation under a non-deferred profits-based compensation plan is permitted provided the compensation is not more than 10 percent of the individual loan originator's total compensation corresponding to the time period for which compensation under the non-deferred profits-based compensation plan is paid. The compensation restrictions under § 1026.36(d)(1)(iv)(B)(*1*) are sometimes referred to in this commentary as the ''10-percent total compensation limit;'' and the restrictions on compensation contained within the rule are sometimes referred to in this commentary as the ''10-percent limit.''

A. *Total compensation.* For purposes of § 1026.36(d)(1)(iv)(B)(*1*), the individual loan originator's total compensation consists of the sum total of: (1) All wages and tips reportable for Medicare tax purposes in box 5 on IRS form W–2 (or, if the individual loan originator is an independent contractor, reportable compensation on IRS form

1099–MISC);[203] and (2) at the election of the person paying the compensation, all contributions by the creditor or loan originator organization to the individual loan originator's accounts in designated tax-advantaged plans that are defined contribution plans.

B. *Profits of the Person.* Under § 1026.36(d)(1)(iv), a plan is a non-deferred profits-based compensation plan if compensation is paid, based in whole or in part, on the profits of the person paying the compensation. As used in § 1026.36(d)(1)(iv)(B)(*1*), ''profits of the person'' include, as applicable depending on where the non-deferred profits-based compensation plan is set, profits of the person, the business unit to which the individual loan originators are assigned for accounting or other organizational purposes, or any affiliate of the person. Profits from mortgage-related business are profits determined with reference to revenue generated from transactions subject to § 1026.36(d). Pursuant to § 1026.36(b) and comment 36(b)–1, § 1026.36(d) applies to closed-end consumer credit transactions secured by dwellings. This revenue includes, without limitation, and as applicable based on the particular sources of revenue of the person, business unit, or affiliate origination fees and interest associated with dwelling-secured transactions for which individual loan originators working for the person were loan originators, income from servicing of such transactions, and proceeds of secondary market sales of such transactions. If the amount of the individual loan originator's compensation under non-deferred profits-based compensation plans paid for a time period does not, in the aggregate, exceed 10 percent of the individual loan originator's total compensation corresponding to the same time period, compensation under non-deferred profits-based compensation plans may be paid under § 1026.36(d)(1)(iv)(B)(*1*) regardless of whether or not it was determined with reference to the profits of the person from mortgage-related business.

C. *Time period for which the compensation under the non-deferred profits-based compensation plan and the total compensation are determined.* Under § 1026.36(d)(1)(iv)(B)(*1*), to determine whether profits-based compensation complies with the 10-percent total compensation limit requires a measurement of the ratio of compensation subject to the 10-percent limit and the total compensation during the relevant time period. The time period for which the compensation is determined is the time period with respect to which the profits from which compensation is paid are calculated. It does not matter whether the compensation subject to the 10-percent limit and the total compensation are actually paid during that particular time period. For example, assume that for calendar year 2013 a creditor pays an individual loan originator compensation in the following amounts: $80,000 in commissions based on the individual loan originator's performance and volume of loans generated during calendar year; and $10,000 in an employer contribution to a designated tax-advantaged defined contribution plan on behalf of the individual loan originator. The employer desires to pay the individual loan originator a year-end profit-related bonus of $10,000. The commissions are paid and employer contributions to the qualified plan are made during calendar year 2013, but the year-end bonus will be paid in January 2014. For purposes of the 10-percent total compensation limit, the year-end bonus is counted as part of both the compensation subject to the 10-percent limit and the total compensation for calendar year 2013 even though it is not actually paid until 2014. Therefore, for calendar year 2013 the individual loan originator's compensation that is subject to the 10-percent limit would be $10,000 (*i.e.,* the year-end bonus) and the total compensation would be $100,000 (*i.e.,* the sum of the commissions, designated plan contribution, and the projected bonus); the bonus would be permissible under § 1026.36(d)(1)(iv) because it does not exceed 10 percent of total compensation. The determination of total compensation corresponding to 2013 also would not take into account any bonus that is actually paid in 2013 but attributable to a different calendar year (*e.g.,* an annual bonus for 2012 that is paid in January 2013). A company, business unit, or affiliate, as applicable, may pay compensation subject to the 10-percent limit during different time periods falling within its annual accounting period for keeping records and reporting income and expenses, which may be a calendar year or a fiscal year depending on the annual accounting period. In such instances, however, the 10-percent limit applies both as to each time period and cumulatively as to the annual accounting period. For example, assume that a creditor uses a calendar-year accounting period. If the creditor pays an individual loan originator a bonus at the end of each quarter under a non-deferred profits-based compensation plan, the payment of each quarterly bonus is subject to the 10-percent limit measured with respect to each quarter. The creditor can also pay an annual bonus under the non-deferred profits-based compensation plan that does not exceed the difference of 10 percent of the individual loan originator's total compensation corresponding to the calendar year and the aggregate amount of quarterly bonuses.

D. *Awards of merchandise, services, trips, or similar prizes or incentives.* If any compensation paid to an individual loan originator under § 1026.36(d)(1)(iv) consists of an award of merchandise, services, trips, or similar prize or incentive, the cash value of the award is factored into the calculations of the 10-percent total compensation limit. For example, during a given calendar year, individual loan originator A and individual loan originator B are each employed by a creditor and paid $40,000 in salary, $44,000 in commissions, and other benefits that have a cash value of $1,000. The creditor also contributes $5,000 to a designated tax-advantaged defined contribution plan for each individual loan originator. Neither individual loan originator is paid any other form of compensation by the creditor. In December of the calendar year, the creditor rewards both individual loan originators for their performance during the calendar year out of a bonus pool established with reference to the profits of the mortgage origination business unit. Individual loan originator A is paid a $10,000 cash bonus, meaning that individual loan originator A's total compensation is $100,000. Individual loan originator B is paid a $7,500 cash bonus and awarded a vacation package with a cash value of $3,000, meaning that individual loan originator B's total compensation is $100,500. Under § 1026.36(d)(1)(iv)(B)(*1*), individual loan originator A's $10,000 bonus is permissible because the bonus would not constitute more than 10 percent of the individual loan originator A's total compensation for the calendar year. The creditor may not pay individual loan originator B the $7,500 bonus and award the vacation package, however, because the total value of the bonus and the vacation package would be $10,500, which is greater than 10 percent (10.45 percent) of individual loan originator B's total compensation for the calendar year. One way to comply with § 1026.36(d)(1)(iv)(B)(*1*) would be if the

[203] If an individual loan originator has some compensation that is reportable on the W–2 and some that is reportable on the 1099–MISC, the total compensation is the sum total of what is reportable on each of the two forms.

amount of the bonus were reduced to $7,000 or less or the vacation package were structured such that its cash value would be $2,500 or less.

E. *Compensation determined only with reference to non-mortgage-related business profits.* Compensation under a non-deferred profits-based compensation plan is not subject to the 10-percent total compensation limit under § 1026.36(d)(1)(iv) if the non-deferred profits-based compensation plan is determined with reference only to profits from business other than mortgage-related business, as determined in accordance with reasonable accounting principles. Reasonable accounting principles reflect an accurate allocation of revenues, expenses, profits, and losses among the person, any affiliate of the person, and any business units within the person or affiliates and are consistent with the accounting principles applied by the person or the affiliate with respect to, as applicable, its internal budgeting and auditing functions and external reporting requirements. Examples of external reporting and filing requirements that may be applicable to creditors and loan originator organizations are Federal income tax filings, Federal securities law filings, or quarterly reporting of income, expenses, loan origination activity, and other information required by government-sponsored enterprises. As used in § 1026.36(d)(1)(iv)(B)(*1*), profits means positive profits or losses avoided or mitigated.

F. *Additional examples. 1.* Assume that, in a given calendar year, a loan originator organization pays an individual loan originator employee $40,000 in salary and $125,000 in commissions, and makes a contribution of $15,000 to the individual loan originator's 401(k) plan. At the end of the year, the loan originator organization wishes to pay the individual loan originator a bonus based on a formula involving a number of performance metrics, to be paid out of a profit pool established at the level of the company but that is derived in part through the company's mortgage originations. Assume that the loan originator organization derives revenues from sources other than transactions covered by § 1026.36(d). In this example, the performance bonus would be directly or indirectly based on the terms of multiple individual loan originators' transactions as described in § 1026.36(d)(1)(i), because it is being funded out of a profit pool derived in part from mortgage originations. Thus, the bonus is permissible under § 1026.36(d)(1)(iv)(B)(*1*) if it does not exceed 10 percent of the loan originator's total compensation, which in this example consists of the individual loan originator's salary, commissions, contribution to the 401(k) plan (if the loan originator organization elects to include the contribution in calculating total compensation), and the performance bonus. Therefore, if the loan originator organization elects to include the 401(k) contribution in total compensation for these purposes, the loan originator organization may pay the individual loan originator a performance bonus of up to $20,000 (*i.e.,* 10 percent of $200,000 in total compensation); if the loan originator organization does not include the 401(k) contribution in calculating total compensation, the bonus may be up to $18,333.33.

2. Assume that the compensation during a given calendar year of an individual loan originator employed by a creditor consists of only salary, commissions, and benefits, and the individual loan originator does not participate in a designated defined contribution plan. Assume further that the creditor uses a calendar-year accounting period. At the end of the calendar year, the creditor pays the individual loan originator two bonuses: a ''performance'' bonus based on the individual loan originator's aggregate loan volume for a calendar year that is paid out of a bonus pool determined with reference to the profitability of the mortgage origination business unit, and a year-end ''holiday'' bonus in the same amount to all company employees that is paid out of a company-wide bonus pool. Because the performance bonus is paid out of a bonus pool that is determined with reference to the profitability of the mortgage origination business unit, it is compensation that is determined with reference to mortgage-related business profits, and the bonus is therefore subject to the 10-percent total compensation limit. If the company-wide bonus pool from which the ''holiday'' bonus is paid is derived in part from profits of the creditor's mortgage origination business unit, then the combination of the ''holiday'' bonus and the performance bonus are subject to the 10-percent total compensation limit. The ''holiday'' bonus is not subject to the 10-percent total compensation limit if the bonus pool is determined with reference only to the profits of business units other than the mortgage origination business unit, as determined in accordance with reasonable accounting principles. If the ''performance'' bonus and the ''holiday'' bonus in the aggregate do not exceed 10 percent of the individual loan originator's total compensation, the bonuses may be paid under § 1026.36(d)(1)(iv)(B)(*1*) without the necessity of determining from which bonus pool they were paid or whether they were determined with reference to the profits of the creditor's mortgage origination business unit.

G. *Reasonable reliance by individual loan originator on accounting or statement by person paying compensation.* An individual loan originator is deemed to comply with its obligations regarding receipt of compensation under § 1026.36(d)(1)(iv)(B)(*1*) if the individual loan originator relies in good faith on an accounting or a statement provided by the person who determined the individual loan originator's profits-based compensation under § 1026.36(d)(1)(iv)(B)(*1*) and where the statement or accounting is provided within a reasonable time period following the person's determination.

vi. *Individual loan originators who originate ten or fewer mortgage loans.* Subject to the conditions in § 1026.36(d)(1)(iv) and (d)(1)(iv)(A), § 1026.36(d)(1)(iv)(B)(*2*) permits compensation to an individual loan originator under a non-deferred profits-based compensation plan even if the payment or contribution is directly or indirectly based on the terms of multiple individual loan originators' transactions if the individual is a loan originator (as defined in § 1026.36(a)(1)(i)) for ten or fewer transactions during the 12-month period preceding the compensation determination. For example, assume a loan originator organization employs two individual loan originators who originate transactions subject to § 1026.36 during a given calendar year. Both employees are individual loan originators under § 1026.36(a)(1)(ii), but only one of them (individual loan originator B) acts as a loan originator in the normal course of business, while the other (individual loan originator A) is called upon to do so only occasionally and regularly performs other duties (such as serving as a manager). In January of the following calendar year, the loan originator organization formally determines the financial performance of its mortgage business for the prior calendar year. Based on that determination, the loan originator organization on February 1 decides to pay a bonus to the individual loan originators out of a company bonus pool. Assume that, between February 1 of the prior calendar year and January 31 of the current calendar year, individual loan originator A was the loan originator for eight transactions, and individual loan originator B was the loan originator for 15 transactions. The loan originator organization may award the bonus to individual loan originator A under § 1026.36(d)(1)(iv)(B)(*2*). The loan originator organization may not award the bonus to individual loan originator B relying on the exception under § 1026.36(d)(1)(iv)(B)(*2*) because it would not apply, although it could award a bonus pursuant to the 10-percent total compensation limit in § 1026.36(d)(1)(iv)(B)(*1*).

4. *Creditor's flexibility in setting loan terms.* Section 1026.36(d) also does not limit a creditor from offering or providing different loan terms to the consumer based on the creditor's assessment of the credit and other transactional risks involved. If a creditor pays compensation to a loan originator in compliance with § 1026.36(d), the creditor may recover the costs of the loan originator's compensation and other costs of the transaction by charging the consumer points or fees or a higher interest rate or a combination of these. Thus, in these transactions, a creditor may charge a higher interest rate to a consumer who will pay fewer of the costs of the transaction at or before closing or it may offer the consumer a lower rate if the consumer pays more of the transaction costs at or before closing. For example, if the consumer pays half of the transaction costs at or before closing, a creditor may charge an interest rate of 6.0 percent but, if the consumer pays none of the transaction costs at or before closing, the creditor may charge an interest rate of 6.5 percent. In these transactions, a creditor also may offer different consumers varying interest rates that include a consistent interest rate premium to recoup the loan originator's compensation through increased interest paid by the consumer (such as by consistently adding 0.25 percentage points to the interest rate on each transaction where the loan originator is compensated based on a percentage of the amount of the credit extended).

5. *Effect of modification of transaction terms.* Under § 1026.36(d)(1), a loan originator's compensation may not be based on any of the terms of a credit transaction. Thus, a creditor and a loan originator may not agree to set the loan originator's compensation at a certain level and then subsequently lower it in selective cases (such as where the consumer is able to obtain a lower rate from another creditor). When the creditor offers to extend credit with specified terms and conditions (such as the rate and points), the amount of the originator's compensation for that transaction is not subject to change (increase or decrease) based on whether different credit terms are negotiated. For example, if the creditor agrees to lower the rate that was initially offered, the new offer may not be accompanied by a reduction in the loan originator's compensation. Thus, while the creditor may change credit terms or pricing to match a competitor, to avoid triggering high-cost mortgage provisions, or for other reasons, the loan originator's compensation on that transaction may not be changed for those reasons. A loan originator therefore may not agree to reduce its compensation or provide a credit to the consumer to pay a portion of the consumer's closing costs, for example, to avoid high-cost mortgage provisions. A loan originator organization may not reduce its own compensation in a transaction where the loan originator organization receives compensation directly from the consumer, with or without a corresponding reduction in compensation paid to an individual loan originator. See comment 36(d)(1)–7 for further interpretation.

6. *Periodic changes in loan originator compensation and terms of transactions.* Section 1026.36 does not limit a creditor or other person from periodically revising the compensation it agrees to pay a loan originator. However, the revised compensation arrangement must result in payments to the loan originator that are not based on the terms of a credit transaction. A creditor or other person might periodically review factors such as loan performance, transaction volume, as well as current market conditions for originator compensation, and prospectively revise the compensation it agrees to pay to a loan originator. For example, assume that during the first six months of the year, a creditor pays $3,000 to a particular loan originator for each loan delivered, regardless of the loan terms or conditions. After considering the volume of business produced by that originator, the creditor could decide that as of July 1, it will pay $3,250 for each loan delivered by that particular originator, regardless of the loan terms or conditions. No violation occurs even if the loans made by the creditor after July 1 generally carry a higher interest rate than loans made before that date, to reflect the higher compensation.

7. *Permitted decreases in loan originator compensation.* Notwithstanding comment 36(d)(1)–5, § 1026.36(d)(1) does not prohibit a loan originator from decreasing its compensation to defray the cost, in whole or part, of an unforeseen increase in an actual settlement cost over an estimated settlement cost disclosed to the consumer pursuant to section 5(c) of RESPA or an unforeseen actual settlement cost not disclosed to the consumer pursuant to section 5(c) of RESPA. For purposes of comment 36(d)(1)–7, an increase in an actual settlement cost over an estimated settlement cost or a cost not disclosed is unforeseen if the increase occurs even though the estimate provided to the consumer is consistent with the best information reasonably available to the disclosing person at the time of the estimate. For example:

i. Assume that a consumer agrees to lock an interest rate with a creditor in connection with the financing of a purchase-money transaction. A title issue with the property being purchased delays closing by one week, which in turn causes the rate lock to expire. The consumer desires to re-lock the interest rate. Provided that the title issue was unforeseen, the loan originator may decrease the loan originator's compensation to pay for all or part of the rate-lock extension fee.

ii. Assume that when applying the tolerance requirements under the regulations implementing RESPA sections 4 and 5(c), there is a tolerance violation of $70 that must be cured. Provided the violation was unforeseen, the rule is not violated if the individual loan originator's compensation decreases to pay for all or part of the amount required to cure the tolerance violation.

8. *Record retention. See* comment 25(c)(2)–1 and –2 for commentary on complying with the record retention requirements of § 1026.25(c)(2) as they apply to § 1026.36(d)(1).

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10. *Amount of credit extended under a reverse mortgage.* For closed-end reverse mortgage loans, the ''amount of credit extended'' for purposes of § 1026.36(d)(1) means either:

i. The maximum proceeds available to the consumer under the loan; or

ii. The maximum claim amount as defined in 24 CFR 206.3 if the mortgage is subject to 24 CFR part 206, or the appraised value of the property, as determined by the appraisal used in underwriting the loan, if the mortgage is not subject to 24 CFR part 206.

36(d)(2) Payments by Persons Other Than Consumer

36(d)(2)(i) Dual Compensation

1. *Compensation in connection with a particular transaction.* Under § 1026.36(d)(2)(i)(A), if any loan originator receives compensation

directly from a consumer in a transaction, no other person may provide any compensation to any loan originator, directly or indirectly, in connection with that particular credit transaction, whether before, at, or after consummation. See comment 36(d)(2)(i)–2 discussing compensation received directly from the consumer. The restrictions imposed under § 1026.36(d)(2)(i) relate only to payments, such as commissions, that are specific to, and paid solely in connection with, the transaction in which the consumer has paid compensation directly to a loan originator. In a transaction where a loan originator receives compensation directly from a consumer, a creditor still may provide funds for the benefit of the consumer in that transaction, provided such funds are applied solely toward costs of the transaction other than loan originator compensation. Section 1026.36(d)(2)(i)(C) provides that, if a loan originator organization receives compensation directly from a consumer, the loan originator organization may provide compensation to individual loan originators, and the individual loan originator may receive compensation from the loan originator organization, subject to the restriction in § 1026.36(d)(1). (See comment 36(a)(1)–1.i for an explanation of the use of the term ''loan originator organization'' and ''individual loan originator'' for purposes of § 1026.36(d)(2)(i)(C).) For example, payments by a mortgage broker to an individual loan originator as compensation for originating a specific credit transaction do not violate § 1026.36(d)(2)(i)(A) even if the consumer directly pays the mortgage broker a fee in connection with that transaction. However, neither the mortgage broker nor the individual loan originator can receive compensation from the creditor in connection with that particular credit transaction.

2. *Compensation received directly from a consumer.* i. Payments by a consumer to a loan originator from loan proceeds are considered compensation received directly from the consumer, while payments derived from an increased interest rate are not considered compensation received directly from the consumer. However, payments by a consumer to the creditor are not considered payments to the loan originator that are received directly from the consumer whether they are paid directly by the consumer (for example, in cash or by check) or out of the loan proceeds. See the definition of ''compensation'' in § 1026.36(a)(3) and related commentary.

ii. Funds from the creditor that will be applied to reduce the consumer's settlement charges, including origination fees paid by a creditor to the loan originator, that are characterized on the disclosures made pursuant to the Real Estate Settlement Procedures Act as a ''credit'' are nevertheless not considered to be received by the loan originator directly from the consumer for purposes of § 1026.36(d)(2)(i).

iii. Section 1026.36(d)(2)(i)(B) provides that compensation received directly from a consumer includes payments to a loan originator made pursuant to an agreement between the consumer and a person other than the creditor or its affiliates, under which such other person agrees to provide funds toward the consumer's costs of the transaction (including loan originator compensation). Compensation to a loan originator is sometimes paid on the consumer's behalf by a person other than a creditor or its affiliates, such as a non-creditor seller, home builder, home improvement contractor or real estate broker or agent. Such payments to a loan originator are considered compensation received directly from the consumer for purposes of § 1026.36(d)(2) if they are made pursuant to an agreement between the consumer and the person other than the creditor or its affiliates. State law determines whether there is an agreement between the parties. *See* § 1026.2(b)(3). The parties do not have to agree specifically that the payments will be used to pay for the loan originator's compensation, but just that the person will make a payment to the loan originator toward the consumer's costs of the transaction, or ''closing costs'' and the loan originator retains such payment. For example, assume that a non-creditor seller (that is not the creditor's affiliate) has an agreement with the consumer to pay $1,000 of the consumer's closing costs on a transaction. Any of the $1,000 that is paid by the non-creditor seller to the loan originator and constitutes ''compensation'' as defined in § 1026.36(a)(3) to the loan originator is compensation received directly from the consumer, even if the agreement does not specify that some or all of $1,000 must be used to compensate the loan originator. Nonetheless, payments by the consumer to the creditor are not payments to the loan originator that are received directly from the consumer. *See* comment 36(d)(2)(i)–2.i. Accordingly, payments in the transaction to the creditor on behalf of the consumer by a person other than the creditor or its affiliates are not payments to the loan originator that are received directly from the consumer.

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36(e) Prohibition on Steering.

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36(e)(3) Loan Options Presented

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3. *Lowest interest rate.* To qualify under the safe harbor in § 1026.36(e)(2), for each type of transaction in which the consumer has expressed an interest, the loan originator must present the consumer with loan options that meet the criteria in § 1026.36(e)(3)(i) for which the loan originator has a good faith belief that the consumer is likely to qualify. The criteria are: the loan with the lowest interest rate; the loan with the lowest total dollar amount of discount points, origination points or origination fees; and a loan with the lowest interest rate without negative amortization, a prepayment penalty, a balloon payment in the first seven years of the loan term, shared equity, or shared appreciation, or, in the case of a reverse mortgage, a loan without a prepayment penalty, shared equity, or shared appreciation. The loan with the lowest interest rate for which the consumer likely qualifies is the loan with the lowest rate the consumer can likely obtain, regardless of how many discount points, origination points or origination fees the consumer must pay to obtain it. To identify the loan with the lowest interest rate, for any loan that has an initial rate that is fixed for at least five years, the loan originator uses the initial rate that would be in effect at consummation. For a loan with an initial rate that is not fixed for at least five years:

i. If the interest rate varies based on changes to an index, the originator uses the fully-indexed rate that would be in effect at consummation without regard to any initial discount or premium.

ii. For a step-rate loan, the originator uses the highest rate that would apply during the first five years.

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36(f) Loan Originator Qualification Requirements

1. *Scope.* Section 1026.36(f) sets forth qualification requirements that a loan originator must meet. As provided in § 1026.36(a)(1) and accompanying commentary, the term ''loan originator'' includes natural persons and organizations and does not exclude creditors for purposes of the qualification requirements in § 1026.36(f).

2. *Licensing and registration requirements.* Section 1026.36(f) requires loan originators to comply with applicable State and Federal licensing and registration requirements, including any such requirements imposed by the SAFE Act and its implementing regulations and State laws. SAFE Act licensing and registration requirements apply to individual loan originators, but many State licensing and registration requirements apply to loan originator organizations as well.

3. *No effect on licensing and registration requirements.* Section 1026.36(f) does not affect which loan originators must comply with State and Federal licensing and registration requirements. For example, the fact that the definition of loan originator in § 1026.36(a)(1) differs somewhat from that in the SAFE Act does not affect who must comply with the SAFE Act. To illustrate, assume an individual is an employee of an organization that a State has determined to be a bona fide nonprofit organization and the State has not subjected the employee to that State's SAFE Act loan originator licensing. If that same individual meets the definition of loan originator in § 1026.36(a)(1), the individual is subject to the requirements of § 1026.36, but the State may continue not to subject the employee to that State's SAFE Act licensing requirements. Similarly, the qualification requirements imposed under § 1026.36(f) do not add to or affect the criteria that States must consider in determining whether a loan originator organization is a bona fide nonprofit organization under the SAFE Act.

Paragraph 36(f)(1)

1. *Legal existence and foreign qualification.* Section 1026.36(f)(1) requires a loan originator organization to comply with applicable State law requirements governing the legal existence and foreign qualification of the loan originator organization. Covered State law requirements include those that must be complied with to bring the loan originator organization into legal existence, to maintain its legal existence, to be permitted to transact business in another State, or to facilitate service of process. For example, covered State law requirements include those for incorporation or other type of legal formation and for designating and maintaining a registered agent for service of process. State law requirements to pay taxes and other requirements that do not relate to legal accountability of the loan originator organization to consumers are outside the scope of § 1026.36(f)(1).

Paragraph 36(f)(2)

1. *License or registration.* Section 1026.36(f)(2) requires the loan originator organization to ensure that individual loan originators who work for it are licensed or registered in compliance with the SAFE Act and other applicable law. The individual loan originators who work for a loan originator organization include individual loan originators who are its employees or who operate under a brokerage agreement with the loan originator organization. Thus, for example, a brokerage is responsible for verifying that the loan originator individuals who work directly for it are licensed and registered in accordance with applicable law, whether the individual loan originators are its employees or independent contractors who operate pursuant to a brokerage agreement. A loan originator organization can meet this duty by confirming the registration or license status of an individual at *www.nmlsconsumeraccess.org.*

Paragraph 36(f)(3)

1. *Unlicensed individual loan originators.* Section 1026.36(f)(3) sets forth actions that a loan originator organization must take for any of its individual loan originator employees who are not required to be licensed and are not licensed as a loan originator pursuant to the SAFE Act. Individual loan originators who are not subject to SAFE Act licensing generally include employees of depository institutions and their Federally regulated subsidiaries and employees of bona fide nonprofit organizations that a State has exempted from licensing under the criteria in 12 CFR 1008.103(e)(7).

Paragraph 36(f)(3)(i)

1. *Criminal and credit histories.* Section 1026.36(f)(3)(i) requires the loan originator organization to obtain, for any of its individual loan originator employees who is not required to be licensed and is not licensed as a loan originator pursuant to the SAFE Act, a criminal background check, a credit report, and information related to any administrative, civil, or criminal determinations by any government jurisdiction. The requirement applies to individual loan originator employees who were hired on or after January 10, 2014 (or whom the loan originator organization hired before this date but for whom there were no applicable statutory or regulatory background standards in effect at the time of hire or before January 10, 2014, used to screen the individual). A credit report may be obtained directly from a consumer reporting agency or through a commercial service. A loan originator organization with access to the NMLSR can meet the requirement for the criminal background check by reviewing any criminal background check it receives upon compliance with the requirement in 12 CFR 1007.103(d)(1) and can meet the requirement to obtain information related to any administrative, civil, or criminal determinations by any government jurisdiction by obtaining the information through the NMLSR. Loan originator organizations that do not have access to these items through the NMLSR may obtain them by other means. For example, a criminal background check may be obtained from a law enforcement agency or commercial service. Information on any past administrative, civil, or criminal findings (such as from disciplinary or enforcement actions) may be obtained from the individual loan originator.

2. *Retroactive obtaining of information not required.* Section 1026.36(f)(3)(i) does not require the loan originator organization to obtain the covered information for an individual whom the loan originator organization hired as a loan originator on or before January 10, 2014, and screened under applicable statutory or regulatory background standards in effect at the time of hire. However, if the individual subsequently ceases to be employed as a loan originator by that loan originator organization, and later resumes employment as a loan originator by that loan originator organization (or any other loan originator organization), the loan originator organization is subject to the requirements of § 1026.36(f)(3)(i).

Paragraph 36(f)(3)(ii)

1. *Scope of review.* Section 1026.36(f)(3)(ii) requires the loan originator organization to review the information that it obtains under § 1026.36(f)(3)(i) and other reasonably available information to determine whether the individual loan originator meets the standards in § 1026.36(f)(3)(ii). Other reasonably available information includes any information the loan originator organization has obtained or would obtain as part of a reasonably prudent hiring process, including information obtained from application forms, candidate interviews, other reliable information and evidence provided by a candidate, and reference checks. The requirement applies to individual loan originator employees who were hired on or after January 10, 2014 (or whom the loan originator organization hired before this date but for whom there were no

applicable statutory or regulatory background standards in effect at the time of hire or before January 10, 2014, used to screen the individual).

2. *Retroactive determinations not required.* Section 1026.36(f)(3)(ii) does not require the loan originator organization to review the covered information and make the required determinations for an individual whom the loan originator organization hired as a loan originator on or before January 10, 2014 and screened under applicable statutory or regulatory background standards in effect at the time of hire. However, if the individual subsequently ceases to be employed as a loan originator by that loan originator organization, and later resumes employment as a loan originator by that loan originator organization (or any other loan originator organization), the loan originator organization employing the individual is subject to the requirements of § 1026.36(f)(3)(ii).

3. *Subsequent determinations.* The loan originator organization must make the required determinations for an individual before the individual acts as a loan originator. Subsequent reviews and assessments are required only if the loan originator organization knows of reliable information indicating that the individual loan originator likely no longer meets the required standards in § 1026.36(f)(3). For example, if the loan originator organization has knowledge of criminal conduct of its individual loan originator through a newspaper article, a previously obtained criminal background report, or the NMLSR, the loan originator organization must determine whether any resulting conviction, or any other information, causes the individual to fail to meet the standards in § 1026.36(f)(3)(ii), regardless of when the loan originator was hired or previously screened.

Paragraph 36(f)(3)(ii)(B)

1. *Financial responsibility, character, and general fitness.* The determination of financial responsibility, character, and general fitness required under § 1026.36(f)(3)(ii)(B) requires an assessment of all information obtained pursuant to paragraph (f)(3)(i) and any other reasonably available information, including information that is known to the loan originator organization or would become known to the loan originator organization as part of a reasonably prudent hiring process. The absence of any significant adverse information is sufficient to support an affirmative determination that the individual meets the standards. A review and assessment of financial responsibility is sufficient if it considers, as relevant factors, the existence of current outstanding judgments, tax liens, other government liens, nonpayment of child support, or a pattern of bankruptcies, foreclosures, or delinquent accounts. A review and assessment of financial responsibility is not required to consider debts arising from medical expenses. A review and assessment of character and general fitness is sufficient if it considers, as relevant factors, acts of unfairness or dishonesty, including dishonesty by the individual in the course of seeking employment or in connection with determinations pursuant to the qualification requirements of § 1026.36(f), and any disciplinary actions by regulatory or professional licensing agencies. No single factor necessarily requires a determination that the individual does not meet the standards for financial responsibility, character, or general fitness, provided that the loan originator organization considers all relevant factors and reasonably determines that, on balance, the individual meets the standards.

2. *Written procedures for making determinations.* A loan originator organization that establishes written procedures for determining whether individuals meet the financial responsibility, character, and general fitness standards under § 1026.36(f)(3)(ii)(B) and comment 36(f)(3)(ii)(B)–1 and follows those written procedures for an individual and complies with the requirement for that individual. Such procedures may provide that bankruptcies and foreclosures are considered under the financial responsibility standard only if they occurred within a recent timeframe established in the procedures. Such procedures are not required to include review of a credit score.

Paragraph 36(f)(3)(iii)

1. *Training.* The periodic training required in § 1026.36(f)(3)(iii) must be sufficient in frequency, timing, duration, and content to ensure that the individual loan originator has the knowledge of State and Federal legal requirements that apply to the individual loan originator's loan origination activities. The training must take into consideration the particular responsibilities of the individual loan originator and the nature and complexity of the mortgage loans with which the individual loan originator works. An individual loan originator is not required to receive training on requirements and standards that apply to types of mortgage loans that the individual loan originator does not originate, or on subjects in which the individual loan originator already has the necessary knowledge and skill. Training may be delivered by the loan originator organization or any other person and may utilize workstation, internet, teleconferencing, or other interactive technologies and delivery methods. Training that a government agency or housing finance agency has established for an individual to originate mortgage loans under a program sponsored or regulated by a Federal, State, or other government agency or housing finance agency satisfies the requirement in § 1026.36(f)(3)(iii), to the extent that the training covers the types of loans the individual loan originator originates and applicable Federal and State laws and regulations. Training that the NMLSR has approved to meet the licensed loan originator continuing education requirement at § 1008.107(a)(2) of this chapter satisfies the requirement of § 1026.36(f)(3)(iii), to the extent that the training covers the types of loans the individual loan originator originates and applicable Federal and State laws and regulations. The training requirements under § 1026.36(f)(3)(iii) apply to individual loan originators regardless of when they were hired.

36(g) Name and NMLSR ID on Loan Documents

Paragraph 36(g)(1)

1. *NMLSR ID.* Section 1026.36(g) requires a loan originator organization to include its name and NMLSR ID and the name and NMLSR ID of the individual loan originator on certain loan documents. As provided in § 1026.36(a)(1), the term ''loan originator'' includes creditors that engage in loan originator activities for purposes of this requirement. Thus, for example, if an individual loan originator employed by a bank originates a loan, the names and NMLSR IDs of the individual and the bank must be included on covered loan documents. The NMLSR ID is a number generally assigned by the NMLSR to individuals registered or licensed through NMLSR to provide loan origination services. For more information, see the SAFE Act sections 1503(3) and (12) and 1504 (12 U.S.C. 5102(3) and (12) and 5103), and its implementing regulations (12 CFR 1007.103(a) and 1008.103(a)(2)). A loan originator organization may also have an NMLSR unique identifier.

2. *Loan originators without NMLSR IDs.* An NMLSR ID is not required by § 1026.36(g) to be included on loan documents if the loan originator is not required to obtain and has not been issued an NMLSR ID. For example,

certain loan originator organizations and individual loan originators who are employees of bona fide nonprofit organizations may not be required to obtain a unique identifier under State law. However, some loan originators may have obtained NMLSR IDs, even if they are not required to have one for their current jobs. If a loan originator organization or an individual loan originator has been provided a unique identifier by the NMLSR, it must be included on the covered loan documents, regardless of whether the loan originator organization or individual loan originator is required to obtain an NMLSR unique identifier. In any event, the name of the loan originator is required by § 1026.36(g) to be included on the covered loan documents.

3. *Inclusion of name and NMLSR ID.* Section 1026.36(g)(1) requires the inclusion of loan originator names and NMLSR IDs on each loan document. Those items need not be included more than once on each loan document on which loan originator names and NMLSR IDs are required, such as by including them on every page of a document.

Paragraph 36(g)(1)(ii)

1. *Multiple individual loan originators.* If more than one individual meets the definition of a loan originator for a transaction, the name and NMLSR ID of the individual loan originator with primary responsibility for the transaction at the time the loan document is issued must be included. A loan originator organization that establishes and follows a reasonable, written policy for determining which individual loan originator has primary responsibility for the transaction at the time the document is issued complies with the requirement. If the individual loan originator with primary responsibility for a transaction at the time a document is issued is not the same individual loan originator who had primary responsibility for the transaction at the time that a previously issued document was issued, the previously issued document is not required to be reissued merely to change a loan originator name and NMLSR ID.

* * * * *

Dated: January 20, 2013.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2013–01503 Filed 2–1–13; 4:15 pm]

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FEDERAL REGISTER

Part III

Department of Housing and Urban Development

Federal Property Suitable as Facilities To Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5681–N–07]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD reviewed in 2012 for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

In accordance with 24 CFR part 581.3(b) landholding agencies were required to notify HUD by December 31, 2012, the current availability status and classification of each property controlled by the Agencies that were published by HUD as suitable and available which remain available for application for use by the homeless.

Pursuant to 24 CFR 581.8(d) and (e) HUD is required to publish a list of those properties reported by the Agencies and a list of suitable/unavailable properties including the reasons why they are not available.

Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Division of Property Management, Program Support Center, HHS, Room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Mr. Robert Moore, Air Force Real Property Agency, 143 Billy Mitchell Blvd., San Antonio, TX 78226, (210) 925–3047; ARMY: Ms. Veronica Rines, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, DAIM–ZS, Room 8536, 2511 Jefferson Davis Hwy, Arlington, VA 22202: (571)–256–8145; COE: Mr. Scott Whiteford, Army Corps of Engineers, Real Estate, CEMP–CR, 441 G Street NW., Washington, DC 20314; (202) 761–5542; COAST GUARD: Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2100 Second St. SW., Stop 7901, Washington, DC 20593–0001; (202) 475–5609; ENERGY: Mr. Mark Price, Department of Energy, Office of Engineering & Construction Management, MA–50, 1000 Independence Ave. SW., Washington, DC 20585: (202) 586–5422; GSA: Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040 Washington, DC 20405, (202) 501–0084; INTERIOR: Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1801 Pennsylvania Ave. NW., 4th Floor, Washington, DC 20006: (202) 254–5522; NAVY: Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202)685–9426; (These are not toll-free numbers).

Dated: February 5, 2013.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, PROPERTIES REPORTED IN YEAR 2012 WHICH ARE SUITABLE AND AVAILABLE

AIR FORCE

ALASKA

BUILDING

12 Buildings
Property Number: 18201240003
Eielson AFB
Eielson AK 99702
Location: 1120, 1121, 1161, 1190, 1300, 4305, 6131, 6398, 1302, 1191, 5281, 3108
Status: Unutilized
Comments: off-site removal only; sf varies; secured area; contact AF for info. on a specific property & accessibility/removal requirements

12 Buildings
Property Number: 18201240029
JBER–E
Anchorage AK 99506
Location: 9372, 9374, 9382, 9378, 57528, 57501, 57438, 57434, 57432, 57409, 57035, 57033
Status: Underutilized
Comments: off-site removal only; sf. varies; moderate conditions; restricted area; contact AF for more info. on a property & accessibility/removal requirements

9 Buildings
Property Number: 18201240030
JBER–E
Anchorage AK 99506
Location: 5374, 59122, 59348,76520,16519,16521,9570,7179,8197
Status: Unutilized
Comments: off-site removal only; sf. varies; moderate conditions; restricted area; contact AF for more info. on a specific property & accessibility/removal requirements

CALIFORNIA

BUILDING

Facility 1
Property Number: 18200830012
OTHB Radar Site
Tulelake CA 91634
Status: Unutilized
Comments: 7920 sq. ft., most recent use—communications

Facility 2
Property Number: 18200830014
OTHB Radar Site
Tulelake CA 91634
Status: Unutilized
Comments: 900 sq. ft., most recent use—vehicle maint shop

Facilities 3, 4
Property Number: 18200830015
OTHB Radar Site
Tulelake CA 91634
Status: Unutilized
Comments: 4160 sq. ft. each, most recent use—communications

Building 1028
Property Number: 18201240009
19338 North St.
Beale CA 95903

Status: Unutilized
Comments: 178 sf.; storage; poor conditions; asbestos & lead; restricted area; contact AF for info. on accessibility requirements
Building 2153
Property Number: 18201240010
6900 Warren Shingle
Beale AFB CA 95903
Status: Unutilized
Comments: 4,000 sf.; storage; very poor conditions; asbestos & lead possible; restricted area; contact AF for info. On accessibility requirements

CALIFORNIA

LAND

Parcels L1 & L2 Property Number: 18200820034
George AFB
Victorville CA 92394
Status: Excess
Comments: 157 acres/desert, pump-and-treat system, groundwater restrictions, AF access rights, access restrictions, environmental concerns

COLORADO

BUILDING

Bldg. 1425 and 143
Property Number: 18201140024
Peterson AFB
Colorado Springs CO 80914
Status: Unutilized
Comments: off-site removal only; 1425–64,254 sq. ft.; 143–100 sq. ft.; current use: storage to base exchange; need repairs; possible asbestos
Building 300
Property Number: 18201230016
Buckley AFB
Aurora CO 80011
Status: Unutilized
Comments: off-site removal only; 1414 sf.; jet fuel labs; roof has collapse & needs to be replaced; restricted area; contact AF for details on accessibility/removal

FLORIDA

BUILDING

Fac. 90329 Property Number: 18201210085
Cape Canaveral AFS
Cape Canaveral FL 32925
Status: Excess
Comments: 4,203 sq. ft.; current use: office; very poor conditions—needs extensive repairs
Facility 9550
Property Number: 18201230056
Eglin AFB
Eglin FL 32542
Status: Unutilized
Comments: 360 sf.; range support bldg.; vacant; 9 mons. poor conditions; asbestos; contact Range Control for prior approval ea. time to access facility

HAWAII

BUILDING

Bldg. 849
Property Number: 18200330008
Bellows AFS
Bellows AFS HI
Status: Unutilized
Comments: 462 sq. ft., concrete storage facility, off-site use only

IDAHO

BUILDING

38 Buildings
Property Number: 18201230034
Aspen & Lodge Pole
Mountain Home ID 83648
Location: 5001–5013, 5015, 5019–5023, 5025, 5027, 5029, 5031–5033, 5035–5041, 5043, 5101, 5103, 5105, 5107, 5109
Status: Underutilized
Comments: off-site removal only; sf. varies; military housing; minor repairs/renovations needed; asbestos & lead present; restricted area; contact AF for info. on accessibility/removal reqs.
38 Buildings
Property Number: 18201230035
Lodge Pole & Cottonwood
Mountain Home ID 83648
Location: 5110–5121, 5123, 5125, 5127–5132,5134,5137, 5139, 5141, 5144–5146, 5150, 5152–5161
Status: Underutilized
Comments: off-site removal only; sf. varies; military housing; minor repairs/renovations needed; asbestos & lead present; restricted area; contact AF for info. on accessibility/removal reqs.
37 Buildings
Property Number: 18201230036
Cottonwood & Sage
Mountain Home ID 83648
Location: 5162–5164, 5166, 5168, 5170, 5201–5208, 5210,5212, 5214–5219, 5221, 5223, 5225–5229, 5231, 5233, 5235–5240
Status: Underutilized
Comments: off-site removal only; sf. varies; military housing; minor repairs/renovations needed; asbestos & lead present; restricted area; contact AF for info. on accessibility/removal reqs.
38 Buildings
Property Number: 18201230037
Sage, Beech, & Hickory
Mountain Home ID 83648
Location: 5241,5243, 5245–5247, 5249, 5251, 5253–5255, 5257, 5259–5261, 5263, 5265, 5268, 5302–5303, 5305–5313, 5315, 5317, 5319–5323, 5323, 5327
Status: Underutilized
Comments: off-site removal only; sf. varies; military housing; minor repairs/renovations needed; asbestos & lead present; restricted area; contact AF for info. on accessibility/removal reqs.
38 Buildings Property Number: 18201230038
Hickory & Pinon
Mountain Home ID 83648
Location: 5329–5333, 5335, 5337, 5339, 5341–5349, 5351, 5353, 5355–5359, 5361, 5363–5367, 5370-5377
Status: Underutilized
Comments: off-site removal only; sf. varies; military housing; minor repairs/renovations needed; asbestos & lead present; restricted area; contact AF for info. on accessibility/removal reqs.
26 Buildings
Property Number: 18201230041
Mountain Home AFB
Mountain Home ID 83648
Location: 45000, 45004, 45007, 45008, 45011, 45012, 45015, 45019, 45022, 45023, 45027, 45031, 45035, 45036, 45039, 45040, 45043, 45103, 45107, 45111, 45112, 45115, 45116, 45119, 45120, 45123
Status: Underutilized
Comments: off-site removal only; 780 sf. for ea. parking; minor repairs/renovations needed; restricted area; contact AF for info. on accessibility/removals reqs.
74 Buildings
Property Number: 18201230042
Mountain Home AFB
Mountain Home ID 83648
Location: 45127, 45130, 45131, 45134, 45135, 45139, 45143, 45146, 45147, 45152, 45156, 45159, 45160, 45163, 45164, 46168, 45172, 45203, 45204, 45207, 45208, 45212, 45216, 45217, 45220, 45221, 45225, 45228, 45229, 45233, 45237, 45238, 45241, 45242, 45245, 45249, 45253, 45254, 45257, 45261, 45264, 45265, 45268, 45272, 45272, 45305, 45308, 45309, 45312, 45313, 45317, 45321, 45322, 45325, 45329, 45332, 45333, 45337, 45341, 45344, 45345, 45348, 45349, 45353, 45357, 45358, 45361, 45365, 45366, 45367, 45372, 45373, 45376, 45377
Status: Underutilized
Comments: off-site removal only; 780 sf. for ea. parking; minor repairs/renovations needed; restricted area; contact AF for info. on accessibility/removals reqs.

ILLINOIS

BUILDING

Bldg. 500
Property Number: 18201220035
Plum Hill MARS
Belleville IL 62221
Status: Unutilized
Comments: 3,519 sf.; communication facility; no utilities; possible ground contamination; need repairs and remediation

MAINE

BUILDING

Bldgs. 1, 2, 3, 4 Property Number: 18200840009
OTH–B Radar Site
Columbia Falls ME
Status: Unutilized
Comments: various sq. ft., most recent use—storage/office

MASSACHUSETTS

LAND

Land/Tract #A101
Property Number: 18201130003
McDill Rd.
Bedford MA 07131
Status: Unutilized
Comments: 5.35 acres, recent use: AF trailer court, property limitation: local Bedford Zoning By-Laws (Industrial Park District A–IP)

MICHIGAN

BUILDING

B–780 Property Number: 18201210043
Selfridge ANGB
Selfridge MI 48045
Status: Unutilized
Comments: off-site removal only; 54,844 sq. ft.; current use: Admin. office; poor conditions—need repairs; lead based paint, asbestos, and mold identified
B–710

Property Number: 18201210051
43901 Oak St.
Selfridge MI 48045
Status: Unutilized
Comments: off-sit removal only; 1,843 sq. ft.; current use: Admin. office; need repairs; asbestos possible

B–326
Property Number: 18201210052
29865 Mitchell St.
Selfridge MI 48045
Status: Unutilized
Comments: off-site removal only; 12,630 sq. ft.; current use: Admin. office; poor conditions—need repairs; possible asbestos

3 Buildings
Property Number: 18201220020
Selfridge ANGB
Selfridge MI 48045
Location: 326, 780, 710
Status: Unutilized
Comments: off-site removal only; sf varies; office/school/barracks; fair conditions; need repairs

MISSOURI

LAND

Communications Site
Property Number: 18200710001
County Road 424
Dexter Co: Stoddard MO
Status: Unutilized
Comments: 10.63 acres

NEW YORK

BUILDING

Bldg. 240
Property Number: 18200340023
Rome Lab
Rome Co: Oneida NY 13441
Status: Unutilized
Comments: 39108 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Bldg. 247
Property Number: 18200340024
Rome Lab
Rome Co: Oneida NY 13441
Status: Unutilized
Comments: 13199 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

Bldg. 248
Property Number: 18200340025
Rome Lab
Rome Co: Oneida NY 13441
Status: Unutilized
Comments: 4000 sq. ft., presence of asbestos, most recent use—Electronic Research Lab

B–102
Property Number: 18201210046
Rome Research Site
Rome NY 13441
Status: Unutilized
Comments: 23,408 sq. ft.; current use: office; fair condition; asbestos and lead based paint identified

NORTH CAROLINA

LAND

0.14 acres
Property Number: 18200810001
Pope AFB
Pope AFB NC
Status: Excess
Comments: most recent use—middle marker, easement for entry

OHIO

BUILDING

Facility 80045
Property Number: 18201230061
1050 Forrer Blvd.
Kettering OH 45429
Status: Underutilized
Comments: 101,153 sf.; admin./lab; structurally sound

TENNESSEE

BUILDING

B–675
Property Number: 18201210080
Arnold AFB
Arnold TN 37389
Status: Underutilized
Comments: 17,589 sq. ft.; current use: lab and Admin. office; very poor conditions—need extensive repairs; transferee will be required to obtain a visitor's pass; Contact Air Force for further details.

TEXAS

BUILDING

B–9278
Property Number: 18201210031
Lackland AFB
Lackland TX
Status: Unutilized
Comments: off-site removal only; 1,581 sq. ft.; current use: storage shed; extensive repairs needed; secured facility—need permission prior to entry

2 Bldgs.
Property Number: 18201210067
Sheppard AFB
Sheppard TX
Location: 248, 249
Status: Unutilized
Comments: sq. ft. varies; current use: trng. poor conditions—need repairs; asbestos possible; prior permission to access military installation is required

4 Bldgs.
Property Number: 18201210068
Sheppard AFB
Sheppard TX
Location: 333, 332, 843, 980
Status: Underutilized
Comments: sq. ft. varies; current use: Admin. offices; poor conditions—need repairs; asbestos possible; prior permission to access military installation is required

TEXAS

BUILDING

Fac. 981
Property Number: 18201210069
Sheppard AFB
Sheppard TX
Status: Underutilized
Comments: 22,380 sf; current use: trng classroom; poor conditions—need repairs; asbestos possible; prior permission to access military installation is required

Fac. 1624
Property Number: 18201210070
Sheppard AFB
Sheppard TX
Location: Thrift Shop
Status: Underutilized
Comments: 27,223 sf.; current use: thrift shop; poor conditions—need repairs; asbestos possible; prior permission to access military installation is required

Fac. 1638
Property Number: 18201210071
Sheppard AFB
Sheppard TX
Status: Underutilized
Comments: 12,161 sf; current use: Admin. office; poor conditions—need repairs; asbestos possible; prior permission to access military installation is required

Fac. 1713
Property Number: 18201210072
Sheppard AFB
Sheppard TX
Status: Unutilized
Comments: 1,395 sf; current use: latrine; poor conditions—need repairs; asbestos possible; prior permission to access military installation is required

Fac. 1715
Property Number: 18201210073
Sheppard AFB
Sheppard TX
Status: Underutilized
Comments: 2,590 sf; current use: latrine; poor conditions—need repairs; asbestos possible; prior permission to access military installation is required

Fac. 2013
Property Number: 18201210074
Sheppard AFB
Sheppard TX
Location: Tech. Trng. Lab/Shop
Status: Unutilized
Comments: 25,091 sf.; current use: vacant; poor conditions—need repairs; asbestos possible; prior permission to access military installation is required

Fac. 247
Property Number: 18201210075
Sheppard AFB
Sheppard TX
Status: Excess
Comments: 2,452 sf.; current use; vacant; poor conditions—need repairs; asbestos possible; prior permission to access military installation is required

Fac. 331
Property Number: 18201210076
Sheppard AFB
Sheppard TX
Status: Underutilized
Comments: 18,295 sf.; current use: unknown; poor conditions—need repairs; asbestos possible; prior permission to access military installation is required

Fac. 250
Property Number: 18201210077
Shepphard AFB
Sheppard TX
Status: Unutilized
Comments: 114 sf.; current use: vacant; poor conditions—need repairs; asbestos possible; prior permission to access military installation is required

6 Buildings
Property Number: 18201220038
Medina Trng. Annex
Lackland AFB TX

Location: 587, 595, 596, 597, 598, 599
Status: Unutilized
Comments: off-site removal only; 2,418 sf. for each; igloos; secured area; prior approval needed to access; deteriorated conditions; needs extensive repairs

TEXAS

LAND

0.13 acres
Property Number: 18200810002
DYAB, Dyess AFB
Tye Co: Taylor TX 79563
Status: Unutilized
Comments: most recent use—middle marker, access limitation

VIRGINIA

BUILDING

Joint Base Langley Eustis
Property Number: 18201240006
1134 Wilson Ave.
Newport News VA
Status: Unutilized
Comments: 887 sf.; storage; poor conditions; restricted area; visitor's pass required; contact AF for more info.

Joint Base Langley Eustis
Property Number: 18201240007
3508 Mulberry Island Rd.
Newport News VA
Status: Unutilized
Comments: 4,026 sf.; storage; poor conditions; restricted pass required; contact AF for more info.

Army

ALABAMA

BUILDING

C1301
Property Number: 21201220017
Ft. McClellan
Ft. McClellan AL 36205
Status: Excess
Comments: off-site removal only; 2,232 sf.; barracks; extensive repairs needed; secured area; need prior approval to access property

ALASKA

BUILDING

Bldg. 00001
Property Number: 21200340075
Kiana Natl Guard Armory
Kiana AK 99749
Status: Excess
Comments: 1200 sq. ft., butler bldg., needs repair, off-site use only

Bldg. 00001
Property Number: 21200710051
Holy Cross Armory
High Cross AK 99602
Status: Excess
Comments: 1200 sq. ft. armory, off-site use only

11 Bldgs.
Property Number: 21201220029
Ft. Greely
Ft. Greely AK 99731
Location: 713, 714, 875, 876, 887, 888, 910, 911, 912, 913
Status: Unutilized
Comments: off-site removal only; sf varies; housing; fair to poor conditions; asbestos and lead; need repairs; need prior approval to access property

B–00877
Property Number: 21201220052
Fort Greely
Ft. Greely AK 99731
Status: Unutilized
Comments: off-site removal only; 14,824 sf.; family housing; poor conditions; need repairs; asbestos & lead identified; secured area; prior approval needed to access & relocate

6 Buildings
Property Number: 21201230008
Ft.Greely
Ft. Greely AK 99731
Location: 350, 833, 835, 878, XSKIA, 834
Status: Unutilized
Comments: off-site removal only; sq. ft. varies; poor conditions—need repairs; some bldgs. have asbestos & lead; contact Army for specific details

ARIZONA

BUILDING

Bldg. S–306
Property Number: 21199420346
Yuma Proving Ground
Yuma Co: Yuma/La Paz AZ 85365–9104
Status: Unutilized
Comments: 4103 sq. ft., 2-story, needs major rehab, off-site use only

Bldg. 503, Yuma Proving Ground
Property Number: 21199520073
Yuma Co: Yuma AZ 85365–9104
Status: Underutilized
Comments: 3789 sq. ft., 2-story, major structural changes required to meet floor loading code requirements, presence of asbestos, off-site use only

Bldg. 43002
Property Number: 21200440066
Fort Huachuca
Cochise AZ 85613–7010
Status: Excess
Comments: 23,152 sq. ft., presence of asbestos/lead paint, most recent use—dining, off-site use only

Bldg. 90551
Property Number: 21200920001
Fort Huachuca
Cochise AZ 85613
Status: Excess
Comments: 1270 sq. ft., most recent use—office, off-site use only

ARKANSAS

BUILDING

7 Bldgs.
Property Number: 21201140055
Pine Bluff Arsenal
Pine Bluff AR 71602
Location: 57240, 57210, 57160, 57150, 57120, 5743, 5739
Status: Unutilized
Comments: off-site removal only; sq. ft. varies; current use: lab/test bldg.

Bldg. 57260
Property Number: 21201140057
Pine Bluff Arsenal
Pine Bluff AR 71602
Status: Unutilized
Comments: off-site removal only; 9,474 sq. ft.; current use: CHM EQ/MAT Bldg.

Bldg. 16440
Property Number: 21201210095
Pine Bluff Arsenal
Pine Bluff AR 71602
Status: Unutilized
Comments: off-site removal; 1,660 sf.; current use: office; extensive mold damage; needs major repairs

CALIFORNIA

BUILDING

Bldgs. 18026, 18028
Property Number: 21200130081
Camp Roberts
Monterey CA 93451–5000
Status: Excess
Comments: 2024 sq. ft. sq. ft., concrete, poor condition, off-site use only

T4243
Property Number: 21201220013
Ord Military Community
Seaside CA 93955
Status: Unutilized
Comments: 2,080 sf.; office space; extremely poor conditions; extensive repairs needed; asbestos & lead identified; remediation needed

258
Property Number: 21201230002
7th Division Rd.
Monterey CA 93928
Location: Hunter Liggett, Fort
Status: Unutilized
Comments: off-site removal only; 192 sf.; use: storage; transferred required to get real estate document authorizing access; secured area; must contact Directorate of Public Works to arrange to access property

5 Buildings
Property Number: 21201230043
JFTB
Los Alamitos CA 90720
Location: 148, 149, 261, 280, 281
Status: Excess
Comments: off-site removal only; sf. varies; use: storage; poor conditions; contamination; permission required to access property to remove of installation

GEORGIA

BUILDING

Bldg. 2593
Property Number: 21199720167
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 13644 sq. ft., needs rehab, most recent use—parachute shop, off-site use only

Bldg. 4232
Property Number: 21199830291
Fort Benning
null Co: Muscogee GA 31905
Status: Unutilized
Comments: 3720 sq. ft., needs rehab, most recent use—maint. bay, off-site use only

Bldgs. 5974–5978
Property Number: 21199930135
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 400 sq. ft., most recent use—storage, off-site use only

Bldg. 5993

Property Number: 21199930136
Fort Benning
Ft. Benning Co: Muscogee GA 31905
Status: Unutilized
Comments: 960 sq. ft., most recent use—storage, off-site use only

Bldg. 3866
Property Number: 21200740182
Fort Benning
Ft. Benning GA 31905
Status: Unutilized
Comments: 944 sq. ft., most recent use—office, off-site use only

Bldg. 8682
Property Number: 21200740183
Fort Benning
Ft. Benning GA 31905
Status: Unutilized
Comments: 780 sq. ft., most recent use—admin., off-site use only

Bldg. 8559
Property Number: 21200920032
Fort Benning
Ft. Benning GA 31905
Status: Excess
Comments: RE–DETERMINATION: 288 sf.; Sep Toil/Shower; average conditions; currently unavailable due to the fact that the building is currently being utilized by the Army.

Bldg. 1201
Property Number: 21201140013
685 Horace Emmet Wilson Blvd.
Savannah GA 31409
Status: Excess
Comments: off-site removal only; 8,736 sq. ft.; current use: Administrative office; fair conditions—bldg. need repairs; possible asbestos

10 Buildings
Property Number: 21201230011
Ft. Benning
Ft. Benning GA 31905
Location: 100, 2753, 2755, 2756, 2761, 2816, 3733, 3742, 3744, 3745
Status: Unutilized
Comments: off-site removal only; sq. ft. varies; use: varies; poor conditions; secured area w/limited access; contact Army for details re: accessibility or specific details related to a bldg.

Building 8603
Property Number: 21201240004
Red Arrow Rd.
Ft. Benning GA 31905
Status: Unutilized
Comments: off-site removal only; 192 sf.; Sep Toil/Shower; poor conditions; secured area; contact Army for info. on accessibility/removal

Building 8585
Property Number: 21201240005
9734 Eighth Division
Ft. Benning GA 31905
Status: Unutilized
Comments: off-site removal only; 192 sf.; Sep Toil/Shower; poor conditions; secured area; contact Army for info. on accessibility/removal

Building 8018
Property Number: 21201240006
7964 First Division Rd.
Ft. Benning GA 31905
Status: Unutilized
Comments: off-site removal only; 264 sf.; Sep Toil/Shower; poor conditions; secured area; contact Army for info. on accessibility/removal

Building 4156
Property Number: 21201240007
6923 Rosell St.
Ft. Benning GA 31905
Status: Unutilized
Comments: off-site removal only; 8,460 sf.; TRANS UPH AST; poor conditions

Building 2835
Property Number: 21201240008
6498 Way Ave.
Ft. Benning GA 31905
Status: Unutilized
Comments: off-site removal only; 2,578 sf.; BN HQ BLDG. TT; poor conditions

HAWAII

BUILDING

P–88
Property Number: 21199030324
Aliamanu Military Reservation
Honolulu Co: Honolulu HI 96818
Location: Approximately 600 feet from Main Gate on Aliamanu Drive.
Status: Unutilized
Comments: 45,216 sq. ft. underground tunnel complex, pres. of asbestos clean-up required of contamination, use of respirator required by those entering property, use limitations

3377Z
Property Number: 21201210054
Schofield Barracks
Wahiawa HI 96786
Status: Unutilized
Comments: off-site removal only; 196 sf.; current use: transformer bldg.; poor conditions—needs repairs

Bldg. 00208
Property Number: 21201210078
Dillingham Military
Waialua HI
Status: Unutilized
Comments: offsite removal only; 480 sq. ft.; recent use: hutment

Bldg. 0300B
Property Number: 21201210083
308 Paalaa Uka Pupukea
Wahiawa Co: Honolulu HI 96786
Status: Unutilized
Comments: off-site removal only; 114 sf.; current use: valve house for water tank; fair conditions

12 Bldgs.
Property Number: 21201220009
Schofield Barracks
Wahiawa HI
Location: 2509, 2510, 2511, 2512, 2513, 2514, 2516, 2517, 3030, 3031, 3032, 3035
Status: Unutilized
Comments: off-site removal only; sf. varies; usage varies; storage; good conditions

A0300
Property Number: 21201230009
308 Paalaa Uka Pupukea Rd.
Helemano
Wahiawa HI 96786
Status: Unutilized
Comments: off-site removal only; 17.25 x 21ft.; water storage

2 Buildings
Property Number: 21201230049
Schofield Barracks
Wahiawa HI 96786
Location: M3010, QRAMP
Status: Unutilized
Comments: off-site removal only; sf. varies; repairs needed; secured area; contact Army re: accessibility requirements

2 Buildings
Property Number: 21201230054
553/537 Airdrome Rd.
Wahiawa HI 96786
Location: 1001, 1005
Status: Unutilized
Comments: off-site removal only; sf. varies; use: shed & shelter; poor conditions; abandoned—need repairs

Bldg. 1536
Property Number: 21201230060
Ft. Shafter
Honolulu HI 96819
Status: Unutilized
Comments: off-site removal only; 2,117sf. vehicle storage; need repairs

6 Properties
Property Number: 21201240027
Schofield Barracks
Wahiawa HI 96786
Location: 24, 1005, 2276, B0886, M3010, QBAMP
Status: Unutilized
Comments: Off-site removal only, sf. varies; poor conditions, contact Army for information onaccessibility removal and specific details on a particular property

ILLINOIS

BUILDING

2 Buildings
Property Number: 21201230050
3155 Blackhawk Dr.
Ft. Sheridan IL 60037
Location: 128, 573
Status: Underutilized
Comments: Off-site removal only; sf. varies; use: varies; fair conditions; asbestos; secured area; contact Army re: accessibility requirements; transferee must obtain real estate doc. authorizing access/removal

KANSAS

BUILDING

Ft. Riley U.S. Army Reservation
Property Number: 21201110010
9377 6800 N RD
Fort Riley Co: Riley KS 66442
Location: 10 bldgs.: 09377, 09302, 09082, 09083, 09084, 09385, 07033, 07034, 07036, 09015
Status: Unutilized
Comments: Off-site removal only; multiple bldgs. w/various sq. footage (610–10,010 sq. ft.), Current use varies) office to range operation support, very poor conditions—need major repairs

Bldg. 00542
Property Number: 21201130063
Fort Riley KS 66442
Status: Unutilized
Comments: off-site removal only; 14, 528 sq. ft.; recent use: lodging

Bldg. 431
Property Number: 21201220044
Ft. Leavenworth
Ft. Leavenworth KS 66027

Status: Unutilized
Comments: off-site removal only; 2,294 sf.; vacant; poor conditions; need repairs; asbestos & lead; remediation needed; secured area; contact Army re: removal procedures

KENTUCKY

BUILDING

Fort Knox Property Number: 21201110011
Eisenhower Avenue
Fort Knox KY 40121
Location: Bldgs.: 06559, 06571, 06575, 06583, 06584, 06585, 06586
Status: Unutilized
Comments: Off-site removal only; multiple bldgs. w/various sq. footage (2,578—8,440 sq. ft.), current use varies (classroom—dental clinic), lead base paint, asbestos & mold identified

Fort Knox, 10 Bldgs.
Property Number: 21201110012
Bacher Street
2nd Dragoons Rd & Abel St
Fort Knox KY 40121
Location: Bldgs.: 06547, 06548, 06549, 06550, 06551, 06552, 06553, 06554, 06557, 06558,
Status: Unutilized
Comments: off-site removal only, multiple bldgs. w/various sq. footage (8,527—41,631 sq. ft.)lead base paint, asbestos & mold identified in all bldgs. Current use varies

Fort Knox, 10 Bldgs.
Property Number: 21201110015
Eisenhower Ave
Fort Knox KY 40121
Location: Bldgs.: 06535, 06536, 06537, 06539, 06540, 06541, 06542, 06544, 06545, 06546
Status: Unutilized
Comments: Off-site removal only, multiple bldgs. w/various sq. ft. (2,510—78,436 sq. ft.) lead base paint, asbestos & mold has been identified in all bldgs. Current use varies

11 Bldgs.
Property Number: 21201140002
Ft. Knox
Ft. Knox KY 40121
Location: 02422, 02423, 02424, 02425, 02956, 02960, 00173, 02197, 02200, 00097, 00098
Status: Unutilized
Comments: off-site removal only; possible lead based paint, asbestos, and mold in all bldgs.; sq. ft. varies; current use: office

5 Bldgs.
Property Number: 21201140003
Ft. Knox
Ft. Knox KY 40121
Location: 02317, 02323, 02324, 02349, 02421
Status: Unutilized
Comments: off-site removal only; possible lead base paint, asbestos, and mold; sq. ft. varies; current use: office

10 Bldgs.
Property Number: 21201140016
Ft. Knox
Ft. Knox KY 40121
Location: 120, 161, 166, 171, 101, 114, 115, 116, 117, 1196
Status: Unutilized
Comments: off-site removal only; sq. ft. varies; current use: office space to storage; possible asbestos and mold

18 Bldgs.
Property Number: 21201140032
Ft. Knox
Ft. Knox KY 40121
Location: 51, 52, 70, 73, 74, 76, 2961, 2963, 2964, 2969, 2970, 2971, 2972, 2973, 2974, 2975, 2979, 2316
Status: Unutilized
Comments: off-site removal only; possible asbestos, mold, and lead base paint; sq. ft. varies; current use: office

12 Bldgs.
Property Number: 21201140033
Ft. Knox
Ft. Knox KY 40121
Location: 77, 78, 80, 81, 85, 86, 92, 94, 96, 9248, 2995, 2996
Status: Unutilized
Comments: off-site removal only; possible mold, asbestos, and lead base paint; sq. ft. varies; current use: office to storage

Bldg. 2980
Property Number: 21201140078
Ft. Knox
Ft. Knox KY 40121
Status: Unutilized
Comments: off-site removal only; 6,900 sq. ft.; current use: office; possible asbestos and mold

Bldg. 1197
Property Number: 21201140079
Ft. Knox
Ft. Knox KY 40121
Status: Unutilized
Comments: off-site removal only; 2,969 sq. ft.; current use: office; possible lead base paint, asbestos and mold

23 Bldgs.
Property Number: 21201210034
Ft. Knox
Ft. Knox KY 40121
Location: 6097, 6098, 6099, 6113, 6114, 6115, 6116, 6118, 6120, 6121, 6123, 6124, 6614, 6615, 6616, 7107, 9209, 9215, 9231, 9254, 9256, 9361, 9619
Status: Unutilized
Comments: Off-site removal only; sq. ft. varies, current use: varies; poor conditions-need repairs; lead, mold, and asbestos identified

20 Bldgs.
Property Number: 21201210035
Ft. Knox
Ft. Knox KY 40121
Location: 45, 46, 64, 75, 79, 107, 114, 155, 202, 205, 299, 1373, 1997, 2319, 2350, 3007, 6033, 6034, 6035, 6036
Status: Unutilized
Comments: Off-site removal only; sq. ft. varies, current use: varies; poor conditions-need repairs; lead, mold, and asbestos identified

5 Bldgs.
Property Number: 21201210036
Ft. Knox
Ft. Knox KY 40121
Location: 6038, 6039, 6040, 6093, 6094
Status: Unutilized
Comments: Off-site removal only; sq. ft. varies, current use: varies; poor conditions-need repairs; lead, mold, and asbestos identified

22 Bldgs.
Property Number: 21201220020
Ft. Knox
Ft. Knox KY 40121
Location: 79,204, 1610, 1996, 2955, 2959, 2965, 2980, 2991, 6531, 6533, 6560, 6561, 6563, 6564, 6565, 6566, 6592, 6594, 9183, 9319, 9320
Status: Unutilized
Comments: off-site removal only; sf varies; usage varies; need repairs; lead and asbestos identified; need remediation

5 Bldgs.
Property Number: 21201220045
Blue Grass Army Depot
Richmond KY 40475
Location: 501, 558, 909, 1003, 1500
Status: Underutilized
Comments: off-site removal only; relocation may be difficult due to extremely poor conditions; sf varies; current use storage; contact Army for further details

27 Bldgs.
Property Number: 21201220046
Blue Grass Army Depot
Richmond KY 40475
Location: F0446–0469, G0470–0474, G0476–0479, H0483–0489, J0491–0493, J0495–0498
Status: Underutilized
Comments: off-site removal only; 168 sf. for each; safety shelter; relocation may be difficult due to poor conditions.

E0450–0457 &E0459
Property Number: 21201220047
Blue Grass Army Depot
Richmond KY 40475
Status: Underutilized
Comments: off-site removal only; 168 sf. for each; safety shelter; relocation may be difficult due to poor conditions.

D0440–D0449
Property Number: 21201220048
Blue Grass Army Depot
Richmond KY 40475
Status: Underutilized
Comments: off-site removal only; 168 sf. for each; safety shelter; relocation may be difficult due to poor conditions.

C0431–C0438
Property Number: 21201220049
Blue Grass Army Depot
Richmond KY 40475
Status: Underutilized
Comments: off-site removal only; 168 sf. for each; safety shelter; relocation may be difficult due to poor conditions.

B0420–B0429
Property Number: 21201220050
Blue Grass Army Depot
Richmond KY 40475
Status: Underutilized
Comments: off-site removal only; 168 sf. for each; safety shelter; relocation may be difficult due to poor conditions.

A0410–0419
Property Number: 21201220051
Blue Grass Army Depot
Richmond KY 40475
Status: Underutilized
Comments: off-site removal only; 168 sf. each; safety shelter; relocation may be difficult due to conditions of properties

15 Buildings
Property Number: 21201230030
Ft. Knox
Ft. Knox KY 40121

Location: 2991, 3006, 6127, 7345, 7346, 9254, 9264, 9294, 9302, 9311, 9315, 9335, 9427, 9503, 9504
Status: Unutilized
Comments: use: maintenance; extremely poor conditions; contamination identified; contact Army for further details & accessibility requirements

10 Buildings
Property Number: 21201230031
Ft. Knox
Ft. Knox KY 40121
Location: 9505, 9506, 9507, 9508, 9509, 9617, 9675, 9681, 9706, 9707
Status: Unutilized
Comments: sf. varies; extremely poor conditions; contamination identified; contact Army for further details & accessibility requirements

LOUISIANA

BUILDING

Bldg. 8423, Fort Polk
Property Number: 21199640528
Ft. Polk Co: Vernon Parish LA 71459
Status: Underutilized
Comments: 4172 sq. ft., most recent use—barracks

B–8248
Property Number: 21201210069
Ft. Polk
Ft. Polk LA 71459
Status: Underutilized
Comments: 3,141 sf.; current use: Admin. Bldg.; poor conditions-need repairs

B–8401
Property Number: 21201210070
Ft. Polk
Ft. Polk LA 71459
Status: Underutilized
Comments: 3,141 sf.; current use: Admin. Bldg.; poor conditions-need repairs

21 Buildings
Property Number: 21201230034
Polk
Ft. Polk LA 71459
Location: 9515, 9537, 9554, 9570, 9593, 9594, 9601, 9602, 9603, 9604, 9607, 9609, 9618, 9619, 9666, 9703, 9741, 9744, 9751, 9753, 9755
Status: Underutilized
Comments: off-site removal only; sf. varies; use: varies; poor conditions; contact Army for further details re: a specific property

18 Buildings
Property Number: 21201230035
Polk
Ft. Polk LA 71459
Location: 9764, 9765, 9773, 9793, 9794, 9797, 9803, 9812, 9818, 9830, 9836, 9837, 9840, 9854, 9913, 9914, 9917, 9920
Status: Underutilized
Comments: off-site removal only; sq. ft. varies; use: varies; poor conditions; contact Army for further details re: a specific property

MARYLAND

BUILDING

Bldg. 0459B
Property Number: 21200120106
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Status: Unutilized
Comments: 225 sq. ft., poor condition, most recent use—equipment bldg., off-site use only

Bldg. 00785
Property Number: 21200120107
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Status: Unutilized
Comments: 160 sq. ft., poor condition, most recent use—shelter, off-site use only

Bldg. E5239
Property Number: 21200120113
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Status: Unutilized
Comments: 230 sq. ft., most recent use—storage, off-site use only

Bldg. E5317
Property Number: 21200120114
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Status: Unutilized
Comments: 3158 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only

Bldg. E5637
Property Number: 21200120115
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Status: Unutilized
Comments: 312 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only

Bldg. 219
Property Number: 21200140078
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755
Status: Unutilized
Comments: 8142 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 00375
Property Number: 21200320107
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 64 sq. ft., most recent use—storage, off-site use only

Bldg. 0385A
Property Number: 21200320110
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 944 sq. ft., off-site use only

Bldg. 00523
Property Number: 21200320113
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 3897 sq. ft., most recent use—paint shop, off-site use only

Bldg. 0700B
Property Number: 21200320121
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 505 sq. ft., off-site use only

Bldg. 01113
Property Number: 21200320128
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1012 sq. ft., off-site use only

Bldgs. 01124, 01132
Property Number: 21200320129
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 740/2448 sq. ft., most recent use—lab, off-site use only

Bldg. 03558
Property Number: 21200320133
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 18,000 sq. ft., most recent use—storage, off-site use only

Bldg. 05262
Property Number: 21200320136
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 864 sq. ft., most recent use—storage, off-site use only

Bldg. 05608
Property Number: 21200320137
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1100 sq. ft., most recent use—maint bldg., off-site use only

Bldg. E5645
Property Number: 21200320150
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 548 sq. ft., most recent use—storage, off-site use only

Bldg. 00435
Property Number: 21200330111
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1191 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 0449A
Property Number: 21200330112
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 143 sq. ft., needs rehab, most recent use—substation switch bldg., off-site use only

Bldg. 0460
Property Number: 21200330114
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1800 sq. ft., needs rehab, most recent use—electrical EQ bldg., off-site use only

Bldg. 00914
Property Number: 21200330118
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: needs rehab, most recent use—safety shelter, off-site use only

Bldg. 00915
Property Number: 21200330119
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 247 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 01189
Property Number: 21200330126
Aberdeen Proving Grounds

Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 800 sq. ft., needs rehab, most recent use—range bldg., off-site use only

Bldg. E1413
Property Number: 21200330127
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: needs rehab, most recent use—observation tower, off-site use only

Bldg. E3175
Property Number: 21200330134
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1296 sq. ft., needs rehab, most recent use—hazard bldg., off-site use only

4 Bldgs.
Property Number: 21200330135
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Location: E3224, E3228, E3230, E3232, E3234
Status: Unutilized
Comments: sq. ft. varies, needs rehab, most recent use—lab test bldgs., off-site use only

Bldg. E3241
Property Number: 21200330136
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 592 sq. ft., needs rehab, most recent use—medical res bldg., off-site use only

Bldg. E3300
Property Number: 21200330139
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 44,352 sq. ft., needs rehab, most recent use—chemistry lab, off-site use only

Bldg. E3335
Property Number: 21200330144
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 400 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldgs. E3360, E3362, E3464
Property Number: 21200330145
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 3588/236 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E3542
Property Number: 21200330148
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1146 sq. ft., needs rehab, most recent use—lab test bldg., off-site use only

Bldg. E4420
Property Number: 21200330151
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 14,997 sq. ft., needs rehab, most recent use—police bldg., off-site use only

4 Bldgs.
Property Number: 21200330154
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Location: E5005, E5049, E5050, E5051
Status: Unutilized
Comments: sq. ft. varies, needs rehab, most recent use—storage, off-site use only

Bldg. E5068
Property Number: 21200330155
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1200 sq. ft., needs rehab, most recent use—fire station, off-site use only

Bldgs. 05448, 05449
Property Number: 21200330161
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 6431 sq. ft., needs rehab, most recent use—enlisted UHP, off-site use only

Bldg. 05450
Property Number: 21200330162
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 2730 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldgs. 05451, 05455
Property Number: 21200330163
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 2730/6431 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 05453
Property Number: 21200330164
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 6431 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. E5609
Property Number: 21200330167
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 2053 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E5611 Property Number: 21200330168
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 11,242 sq. ft., needs rehab, most recent use—hazard bldg., off-site use only

Bldg. E5634
Property Number: 21200330169
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 200 sq. ft., needs rehab, most recent use—flammable storage, off-site use only

Bldg. E5654
Property Number: 21200330171
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 21,532 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E5942
Property Number: 21200330176
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 2147 sq. ft., needs rehab, most recent use—igloo storage, off-site use only

Bldgs. E5952, E5953
Property Number: 21200330177
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 100/24 sq. ft., needs rehab, most recent use—compressed air bldg., off-site use only

Bldgs. E7401, E7402
Property Number: 21200330178
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 256/440 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E7407, E7408
Property Number: 21200330179
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1078/762 sq. ft., needs rehab, most recent use—decon facility, off-site use only

Bldg. 3070A
Property Number: 21200420055
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 2299 sq. ft., most recent use—heat plant, off-site use only

Bldg. E5026
Property Number: 21200420056
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 20,536 sq. ft., most recent use—storage, off-site use only

Bldg. 05261
Property Number: 21200420057
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 10067 sq. ft., most recent use—maintenance, off-site use only

Bldg. E5876
Property Number: 21200440073
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1192 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 00688
Property Number: 21200530080
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 24,192 sq. ft., most recent use—ammo, off-site use only

Bldg. 04925
Property Number: 21200540091
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005
Status: Unutilized
Comments: 1326 sq. ft., off-site use only

Bldg. 00255
Property Number: 21200720052
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 64 sq. ft., most recent use—storage, off-site use only

Bldg. 00638
Property Number: 21200720053
Aberdeen Proving Ground
Harford MD 21005

Status: Unutilized
Comments: 4295 sq. ft., most recent use—storage, off-site use only
Bldg. 00721
Property Number: 21200720054
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 135 sq. ft., most recent use—storage, off-site use only
Bldgs. 00936, 00937
Property Number: 21200720055
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 2000 sq. ft., most recent use—storage, off-site use only
Bldgs. E1410, E1434
Property Number: 21200720056
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 2276/3106 sq. ft., most recent use—laboratory, off-site use only
Bldg. 03240
Property Number: 21200720057
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 10,049 sq. ft., most recent use—office, off-site use only
Bldg. E3834
Property Number: 21200720058
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 72 sq. ft., most recent use—office, off-site use only
Bldgs. E4465, E4470, E4480
Property Number: 21200720059
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 17658/16876/17655 sq. ft., most recent use—office, off-site use only
Bldgs. E5137, 05219
Property Number: 21200720060
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 3700/8175 sq. ft., most recent use—office, off-site use only
Bldg. E5236
Property Number: 21200720061
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 10,325 sq. ft., most recent use—storage, off-site use only
Bldg. E5282
Property Number: 21200720062
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 4820 sq. ft., most recent use—hazard bldg., off-site use only
Bldgs. E5736, E5846, E5926
Property Number: 21200720063
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 1069/4171/11279 sq. ft., most recent use—storage, off-site use only
Bldg. E6890
Property Number: 21200720064
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 1 sq. ft., most recent use—impact area, off-site use only
Bldg. 00310
Property Number: 21200820077
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 56516 sq. ft., most recent use—admin., off-site use only
Bldg. 00315
Property Number: 21200820078
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 74396 sq. ft., most recent use—mach shop, off-site use only
Bldg. 00338
Property Number: 21200820079
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 45443 sq. ft., most recent use—gnd tran eqp, off-site use only
Bldg. 00360
Property Number: 21200820080
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 15287 sq. ft., most recent use—general inst., off-site use only
Bldg. 00445
Property Number: 21200820081
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 6367 sq. ft., most recent use—lab, off-site use only
Bldg. 00851
Property Number: 21200820082
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 694 sq. ft., most recent use—range bldg., off-site use only
E1043
Property Number: 21200820083
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 5200 sq. ft., most recent use—lab, off-site use only
Bldg. 01089
Property Number: 21200820084
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 12369 sq. ft., most recent use—vehicle maint, off-site use only
Bldg. 01091
Property Number: 21200820085
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 2201 sq. ft., most recent use—storage, off-site use only
Bldg. E1386
Property Number: 21200820086
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 251 sq. ft., most recent use—eng/mnt, off-site use only
5 Bldgs.
Property Number: 21200820087
Aberdeen Proving Ground
Harford MD
Location: E1440, E1441, E1443, E1445, E1455
Status: Unutilized
Comments: 112 sq. ft., most recent use—safety shelter, off-site use only
Bldgs. E1467, E1485
Property Number: 21200820088
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 160/800 sq. ft., most recent use—storage, off-site use only
Bldg. E1521
Property Number: 21200820090
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 1200 sq. ft., most recent use—overhead protection, off-site use only
Bldg. E1570
Property Number: 21200820091
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 47027 sq. ft., most recent use—office, off-site use only
Bldg. E1572
Property Number: 21200820092
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 1402 sq. ft., most recent use—maint. off-site use only
4 Bldgs.
Property Number: 21200820093
Aberdeen Proving Ground
Harford MD
Location: E1645, E1675, E1677, E1930
Status: Unutilized
Comments: various sq. ft., most recent use—office, off-site use only
Bldgs. E2160, E2184, E2196
Property Number: 21200820094
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 12440/13816 sq. ft., most recent use—storage, off-site use only
Bldg. E2174
Property Number: 21200820095
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 132 sq. ft., off-site use only
Bldgs. 02208, 02209
Property Number: 21200820096
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 11566/18085 sq. ft., most recent use—lodging, off-site use only
Bldg. 02353
Property Number: 21200820097
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 19252 sq. ft., most recent use—vehicle maint, off-site use only
Bldgs. 02482, 02484

Property Number: 21200820098
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 8359 sq. ft., most recent use—gen purp, off-site use only

Bldg. 02483
Property Number: 21200820099
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 1360 sq. ft., most recent use—heat plt, off-site use only

Bldgs. 02504, 02505
Property Number: 21200820100
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 11720/17434 sq. ft., most recent use—lodging, off-site use only

Bldgs. 02831, E3488
Property Number: 21200820101
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 576/64 sq. ft., most recent use—access cnt fac, off-site use only

Bldg. 2831A
Property Number: 21200820102
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 1200 sq. ft., most recent use—overhead protection, off-site use only

Bldg. 03320
Property Number: 21200820103
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 10600 sq. ft., most recent use—admin, off-site use only

Bldg. E3466
Property Number: 21200820104
Aberdeen Proving Ground
Aberdeen MD
Status: Unutilized
Comments: 236 sq. ft., most recent use—protective barrier, off-site use only

4 Bldgs.
Property Number: 21200820105
Aberdeen Proving Ground
Harford MD
Location: E3510, E3570, E3640, E3832
Status: Unutilized
Comments: various sq. ft., most recent use—lab, off-site use only

Bldg. E3544
Property Number: 21200820106
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 5400 sq. ft., most recent use—ind waste, off-site use only

Bldgs. E3561, 03751
Property Number: 21200820107
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 64/189 sq. ft., most recent use—access cnt fac, off-site use only

Bldg. 03754
Property Number: 21200820108
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 324 sq. ft., most recent use—classroom, off-site use only

Bldg. 3823A
Property Number: 21200820109
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 113 sq. ft., most recent use—shed, off-site use only

Bldg. E3948
Property Number: 21200820110
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 3420 sq. ft., most recent use—emp chg fac, off-site use only

4 Bldgs.
Property Number: 21200820111
Aberdeen Proving Ground
Harford MD
Location: E5057, E5058, E5246, 05258
Status: Unutilized
Comments: various sq. ft., most recent use—storage, off-site use only

Bldgs. E5106, 05256
Property Number: 21200820112
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 18621/8720 sq. ft., most recent use—office, off-site use only

Bldg. E5126
Property Number: 21200820113
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 17664 sq. ft., most recent use—heat plt, off-site use only

Bldg. E5128
Property Number: 21200820114
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 3750 sq. ft., most recent use—substation, off-site use only

Bldg. E5188
Property Number: 21200820115
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 22790 sq. ft., most recent use—lab, off-site use only

Bldg. E5179
Property Number: 21200820116
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 47335 sq. ft., most recent use—info sys, off-site use only

Bldg. E5190
Property Number: 21200820117
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 874 sq. ft., most recent use—storage, off-site use only

Bldg. 05223
Property Number: 21200820118
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 6854 sq. ft., most recent use—gen rep inst, off-site use only

Bldgs. 05259, 05260
Property Number: 21200820119
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 10067 sq. ft., most recent use—maint, off-site use only

Bldgs. 05263, 05264
Property Number: 21200820120
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 200 sq. ft., most recent use—org space, off-site use only

5 Bldgs.
Property Number: 21200820121
Aberdeen Proving Ground
Harford MD
Location: 05267, E5294, E5327, E5441, E5485
Status: Unutilized
Comments: various sq. ft., most recent use—storage, off-site use only

Bldg. E5292
Property Number: 21200820122
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 1166 sq. ft., most recent use—comp rep inst, off-site use only

Bldg. E5380
Property Number: 21200820123
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 9176 sq. ft., most recent use—lab, off-site use only

Bldg. E5452
Property Number: 21200820124
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 9623 sq. ft., off-site use only

Bldg. 05654
Property Number: 21200820125
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 38 sq. ft. most recent use—shed, off-site use only

Bldg. 05656
Property Number: 21200820126
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 2240 sq. ft., most recent use—overhead protection off-site use only

5 Bldgs.
Property Number: 21200820127
Aberdeen Proving Ground
Harford MD
Location: E5730, E5738, E5915, E5928, E6875
Status: Unutilized
Comments: various sq. ft., most recent use—storage, off-site use only

Bldg. E5840
Property Number: 21200820129
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 14200 sq. ft., most recent use—lab, off-site use only

Bldg. E5946
Property Number: 21200820130
Aberdeen Proving Ground

Harford MD
Status: Unutilized
Comments: 2147 sq. ft., most recent use—igloo str, off-site use only

Bldg. E6872
Property Number: 21200820131
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 1380 sq. ft., most recent use—dispatch, off-site use only

Bldgs. E7331, E7332, E7333
Property Number: 21200820132
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: most recent use—protective barrier, off-site use only

Bldg. E7821
Property Number: 21200820133
Aberdeen Proving Ground
Harford MD
Status: Unutilized
Comments: 3500 sq. ft., most recent use—xmitter bldg., off-site use only

Bldg. 02483
Property Number: 21200920025
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 1360 sq. ft., most recent use—heat plt bldg., off-site use only

Bldg. 03320
Property Number: 21200920026
Aberdeen Proving Ground
Harford MD 21005
Status: Unutilized
Comments: 10,600 sq. ft., most recent use—admin., off-site use only

Bldg. 06186
Property Number: 21201110026
Ft. Detrick
Fredrick MD 21702
Status: Unutilized
Comments: off-site removal only, 14,033 sq. ft., current use: communications ctr., bldg. not energy efficient but fair condition

Bldg. 01692
Property Number: 21201110028
Ft. Detrick
Fredrick MD 21702
Status: Unutilized
Comments: off-site removal only, 1,000 sq. ft., current use; communications ctr., bldg. is not energy efficient but in fair condition

10 Bldgs.
Property Number: 21201210016
Aberdeen Proving Ground
Aberdeen MD 21005
Location: E3266, E3268, E3269, E3299, E3300, E3305, E3306, E3326, E3344, E3500
Status: Unutilized
Comments: off-site removal only; sq. ft. varies; current use: varies; lead and asbestos identified; moderate conditions

10 Bldgs.
Property Number: 21201210017
Aberdeen Proving Ground
Aberdeen MD 21005
Location: E3507, E3514, E3516, E3520, E3522, E3524, E3525, E3549, E3550, E3552
Status: Unutilized
Comments: off-site removal only; sq. ft. varies; current use: varies; lead and asbestos identified; moderate conditions

10 Bldgs.
Property Number: 21201210018
Aberdeen Proving Ground
Aberdeen MD 21005
Location: E3570, E3573, E3607, E3615, E3623, E3646, E4405, E4410, E4415, E4420
Status: Unutilized
Comments: off-site removal only; sq. ft. varies; current use: varies; lead and asbestos identified; moderate conditions

11 Bldgs.
Property Number: 21201210019
Aberdeen Proving Ground
Aberdeen MD 21005
Location: E4430, E4435, E4440, E4445, E4460, E4465, E4470, E4475, E4480, E5027
Status: Unutilized
Comments: off-site removal only; sq. ft. varies; current use: varies; lead and asbestos identified; moderate conditions

10 Bldgs.
Property Number: 21201210020
Aberdeen Proving ground
Aberdeen MD 21005
Location: E5106, E5135, E5141, E5158, E5164, E5165, E5188, E5342, E5354, E5356
Status: Unutilized
Comments: off-site removal only; sq. ft. varies; current use: varies; lead and asbestos identified; moderate conditions

9 Bldgs.
Property Number: 21201210021
Aberdeen Proving Ground
Aberdeen MD 21005
Location: E5365, E5425, E5427, E5429, E5643, E5684, E5686, E5687, E5725
Status: Unutilized
Comments: off-site removal only; sq. ft. varies; current use: varies; lead and asbestos identified; moderate conditions

9 Bldgs.
Property Number: 21201210022
Aberdeen Proving Ground
Aberdeen MD 21005
Location: E5771, E5772, E5774, E5779, E5782, E5800, E5804, E5824, E5872
Status: Unutilized
Comments: off-site removal only; sq. ft. varies; current use: varies; lead and asbestos identified; moderate conditions

7 Bldgs.
Property Number: 21201210023
Aberdeen Proving Ground
Aberdeen MD 21005
Location: E5910, E5911, E5912, E5913, E5914, E5932, E5940
Status: Unutilized
Comments: off-site removal only; sq. ft. varies; current use: varies; lead and asbestos identified; moderate conditions

7 Bldgs.
Property Number: 21201210024
Aberdeen Proving Ground
Aberdeen MD 21005
Location: E5944, E5950, E6834, RAILA, RAILE, 02043, E5722
Status: Unutilized
Comments: off-site removal only; sq. ft. varies; current use: varies; lead and asbestos identified; moderate conditions

13 Bldgs.
Property Number: 21201210025
Aberdeen Proving Ground
Aberdeen MD 21005
Location: 380, 440, 441, 464, 637, 724, 724A, 724D, 724E, 1101A, 2001, 2040, 2041
Status: Unutilized
Comments: off-site removal only; sq. ft. varies; current use: varies; lead and asbestos identified; moderate conditions

10 Bldgs.
Property Number: 21201210026
Aberdeen Proving Ground
Aberdeen MD 21005
Location: 2042, 2308, 2312, 2314, 2333, 2338, 2351, 2354, 2431, 2432
Status: Unutilized
Comments: off-site removal only; sq. ft. varies; current use: varies; lead and asbestos identified; moderate conditions

9 Bldgs.
Property Number: 21201210027
Aberdeen Proving Ground
Aberdeen MD 21005
Location: 2453, 2457, 2458, 3409, 3410, 3554, 4031, 4035, 4036
Status: Unutilized
Comments: off-site removal only; sq. ft. varies; current use: varies; lead and asbestos identified; moderate conditions

13 Bldgs.
Property Number: 21201210028
Aberdeen Proving Ground
Aberdeen MD 21005
Location: E3236, E3107, E3109, E3156, E3221, E3222, E3223, E3224, E3226, E3230, E3232, E3234, E3265
Status: Unutilized
Comments: off-site removal only; sq. ft. varies; current use: varies; lead and asbestos identified; moderate conditions

8 Bldgs.
Property Number: 21201210029
Aberdeen Proving Ground
Aberdeen MD 21005
Location: E1890, E1936, E1946, E1950, E1958, E2100, E2101, E2105
Status: Unutilized
Comments: off-site removal only; sq. ft. varies; current use: varies; lead and asbestos identified; moderate conditions

11 Bldgs.
Property Number: 21201210030
Aberdeen Proving Ground
Aberdeen MD 21005
Location: E2309, E2400, E2580, E3081, E3083, E3100, E3101, E3103, E3104, E3105, E3106
Status: Unutilized
Comments: off-site removal only; sq. ft. varies; current use: varies; lead and asbestos identified; moderate conditions

5 Bldgs.
Property Number: 21201210031
Aberdeen Proving Ground
Aberdeen MD 21005
Location: 4302, 4303, 4316, 4317, E1607
Status: Unutilized
Comments: off-site removal only; sq. ft. varies; current use: varies; lead and asbestos identified; moderate conditions

Bldg. 00402
Property Number: 21201210056
402 Blossom Point Rd.
Welcome Co: Charles MD 20693
Status: Unutilized
Comments: Off site removal only; recent use: storage; 54 sq. ft.

Bldg. 00517

Property Number: 21201210057
517 Blossom Point Rd.
Welcome Co: Charles MD 20693
Status: Unutilized
Comments: off-site removal only; 110 sf.; current use: range bldg.; need repairs

Bldg. 00603
Property Number: 21201210058
Adelphi Laboratory Center
Adelphi Co: Montgomery MD 20783
Status: Unutilized
Comments: off-site removal; 640 sf.; current use: storage; need repairs

Bldg. 604
Property Number: 21201210060
Adelphi Laboratory Center
Adelphi MD 20783
Status: Unutilized
Comments: off-site removal only; 375 sf.; current use: storage; need repairs

Bldg. 724B
Property Number: 21201220003
Aberdeen Proving Ground
Aberdeen MD 21005
Status: Unutilized
Comments: off-site removal only; 1 sf.; current use: safety shelter; moderate conditions; lead & asbestos identified; need remediation

4 Buildings
Property Number: 21201240001
Aberdeen Proving Ground
Aberdeen MD 21005
Location: 3409, 3410, E3615, RAILR
Status: Unutilized
Comments: off-site removal only; sf. varies; moderate conditions; located w/in secured area; contact Army on accessibility/removal and specific details on a property

LAND

2 acres
Property Number: 21200640095
Fort Meade
Odenton Rd/Rt 175
Ft. Meade MD 20755
Status: Unutilized
Comments: light industrial

16 acres
Property Number: 21200640096
Fort Meade
Rt 198/Airport Road
Ft. Meade MD 20755
Status: Unutilized
Comments: light industrial

MINNESOTA

BUILDING

18 Bldgs.
Property Number: 21201210059
1245 Hwy 96 West
Arden Hills Army TRNG Site
Arden Hills MN 55112
Location: 12155, 12156, 12157, 01200, 01201, 01202, 01203, 01204, 01205, 01206, 04202, 11218, 11219, 11220, 11221, 11222, 11223, 04203
Status: Unutilized
Comments: off-site removal only; sf. varies; current use: storage; poor conditions-need repairs

MISSOURI

BUILDING

Bldg. T1497
Property Number: 21199420441
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Underutilized
Comments: 4720 sq. ft., 2-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T2139
Property Number: 21199420446
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Underutilized
Comments: 3663 sq. ft., 1-story, presence of lead base paint, most recent use—admin/gen. purpose, off-site use only

Bldg. T2385
Property Number: 21199510115
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473
Status: Excess
Comments: 3158 sq. ft., 1-story, wood frame, most recent use—admin., to be vacated 8/95, off-site use only

Bldg. 2167
Property Number: 21199820179
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comments: 1296 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldgs. 2192, 2196, 2198
Property Number: 21199820183
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–5000
Status: Unutilized
Comments: 4720 sq. ft., presence of asbestos/lead paint, most recent use—barracks, off-site use only

12 Bldgs.
Property Number: 21200410110
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Location: 07036, 07050, 07054, 07102, 07400, 07401, 8245, 08249 08251, 08255, 08257, 08261.
Status: Unutilized
Comments: 7152 sq. ft. 6 duplex housing quarters, potential contaminants, off-site use only.

6 Bldg.
Property Number: 21200410111
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Location: 07044, 07106, 07107, 08260, 08281, 08300
Status: Unutilized
Comments: 9520 sq. ft., 8 duplex housing quarters, potential contaminants, off-site use only.

15 Bldgs.
Property Number: 21200410112
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Location: 08242, 08243, 08246–08248, 08250, 08252–08254, 08256, 08258–08259, 08262–08263, 08265
Status: Unutilized
Comments: 4784 sq. ft., 4 duplex housing quarters, potential contaminants, off-site use only.

Bldgs. 08283, 08285
Property Number: 21200410113
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Comments: 2240 sq. ft., 2 duplex housing quarters, potential contaminants, off-site use only

15 Bldgs.
Property Number: 21200410114
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–0827
Location: 08267, 08269, 08271, 08273, 08275, 08277, 08279, 08290 08296, 08301
Status: Unutilized
Comments: 4784 sq. ft., 4 duplex housing quarters, potential contaminants, off-site use only

Bldg. 09432
Property Number: 21200410115
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Comments: 8724 sq. ft., 6-plex housing quarters, potential contaminants, off-site use only.

Bldgs. 5006 and 5013
Property Number: 21200430064
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Comments: 192 sq. ft., needs repair, most recent use—generator bldg., off-site use only

Bldgs. 13210, 13710
Property Number: 21200430065
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Comments: 144 sq. ft. each, needs repair, most recent use—communication, off-site use only

MONTANA

BUILDING

Bldg. 00405
Property Number: 21200130099
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636
Status: Unutilized
Comments: 3467 sq. ft., most recent use—storage, security limitations

Bldg. T0066
Property Number: 21200130100
Fort Harrison
Ft. Harrison Co: Lewis/Clark MT 59636
Status: Unutilized
Comments: 528 sq. ft., needs rehab, presence of asbestos, security limitations

Bldg. 00001
Property Number: 21200540093
Sheridan Hall USARC
Helena MT 59601
Status: Unutilized
Comments: 19,321 sq. ft., most recent use—Reserve Center

Bldg. 00003

Property Number: 21200540094
Sheridan Hall USARC
Helena MT 59601
Status: Unutilized
Comments: 1950 sq. ft., most recent use—maintenance/storage

NEW JERSEY

BUILDING

17 Bldgs.
Property Number: 21201210033
Picatinny Arsenal
Dover NJ 07806
Location: 75A, 614A, 623A, 623B, 623C, 623D, 623E, 623F, 636C, 636D, 637A, 639A, 640B, 641B, 641E, 1222D, 3029D
Status: Unutilized
Comments: Off-site removal only; sq. ft. varies, current use: varies; poor conditions—need repairs; contamination-needs remediation.

7 Bldgs.
Property Number: 21201210038
Picatinny Arsenal
Dover NJ 07806
Location: 75, 99,281,332,614,615,623
Status: Unutilized
Comments: Off-site removal only; sq. ft. varies, current use: varies; poor conditions—need repairs; contamination-needs remediation.

4 Bldgs.
Property Number: 21201220011
Picatinny Arsenal
Dover NJ 07806
Location: 1179, 1179A, 1179C, 1179D
Status: Unutilized
Comments: off-site removal only; sf varies; usage varies; need repairs; contamination; remediation required; secured area; need prior approval to access property; contact Army for more details

4 Building
Property Number: 21201240026
Route 15 North
Picatinny Arsenal NJ 07806
Location: 3701,3702,3706,3709
Status: Unutilized
Comments: Off-site removal only, sq. varies, moderate conditions, restricted area; contact Army for information on accessibility removal and specific details on a particular property.

NEW MEXICO

BUILDING

Bldg. 34198
Property Number: 21200230062
White Sands Missile Range
Dona Ana NM 88002
Status: Excess
Comments: 107 sq. ft., most recent use—security, off-site use only

NEW YORK

BUILDING

Bldg.1227
Property Number: 21200440074
U.S. Military Academy
Highlands Co: Orange NY 10996–1592
Status: Unutilized
Comments: 3800 sq. ft., needs repair, possible asbestos/lead paint, most recent use—maintenance, off-site use only

Bldg. 2218
Property Number: 21200510067
Stewart Newburg USARC
New Windsor Co: Orange NY 12553–9000
Status: Unutilized
Comments: 32,000 sq. ft., poor condition, requires major repairs, most recent use—storage/services

7 Bldgs.
Property Number: 21200510068
Stewart Newburg USARC
New Windsor Co: Orange NY 12553–9000
Location: 2122, 2124, 2126, 2128, 2106, 2108, 2104
Status: Unutilized
Comments: sq. ft. varies, poor condition, needs major repairs, most recent use—storage/services

Bldg. 1230
Property Number: 21200940014
U.S. Army Garrison
Orange NY 10996
Status: Unutilized
Comments: 4538 sq. ft., possible asbestos/lead paint, most recent use—clubhouse, off-site use only

Bldg. 4802
Property Number: 21201010019
Fort Drum
Jefferson NY 13602
Status: Unutilized
Comments: 3300 sq. ft., most recent use—hdgts. facility, off-site use only

Bldgs. 4813
Property Number: 21201010020
Fort Drum
Jefferson NY 13602
Status: Unutilized
Comments: 750 sq. ft., most recent use—wash rack, off-site use only

Bldg. 4814
Property Number: 21201010021
Fort Drum
Jefferson NY 13602
Status: Unutilized
Comments: 2592 sq. ft., most recent use—item repair, off-site use only

Bldgs. 1240, 1255
Property Number: 21201010022
Fort Drum
Jefferson NY 13602
Status: Unutilized
Comments: various sq. ft., most recent use—vehicle maint. facility, off-site use only

6 Bldgs.
Property Number: 21201010023
Fort Drum
Jefferson NY 13602
Location: 1248, 1250, 1276, 2361, 4816, 4817
Status: Unutilized
Comments: various sq. ft., most recent use—storage, off-site use only

Bldg. 1050
Property Number: 21201010024
Fort Drum
Jefferson NY 13602
Status: Unutilized
Comments: 1493 sq. ft., most recent use—training, off-site use only

Bldg. 10791
Property Number: 21201010025
Fort Drum
Jefferson NY 13602
Status: Unutilized
Comments: 72 sq. ft., most recent use—smoking shelter, off-site use only

6 Bldgs.
Property Number: 21201110049
Ft. Drum
Watertown NY 13602
Location: 01000, 01001, 01003,01008,01010,01012
Status: Underutilized
Comments: off-site removal only, multiple bldgs. w/varies sq. ft., current use varies

21 Bldgs.
Property Number: 21201140026
Ft. Drum
Ft. Drum NY 13602
Location: 10280, 10281, 10282, 10283, 10284, 10285, 10286, 10288, 10289, 10290, 10291, 10503, 10504, 10505, 10506, 10590, 10591, 10592, 10593, 10594, 10595
Status: Unutilized
Comments: off-site removal only; sq. ft. varies; current use: concrete pad

Bldg. 02713
Property Number: 21201140028
Ft. Drum
Ft. Drum NY 13602
Status: Underutilized
Comments: off-site removal only; 1,029 sq. ft.; need major repairs; current use: Administrative office

2 Bldgs.
Property Number: 21201140030
Ft. Drum
Ft. Drum NY 13602
Location: 1444 and 1445
Status: Underutilized
Comments: off-site removal only; bldg. 1444= 4,166 sq. ft.; bldg. 1445= 7,219 sq. ft.; current use: varies; need extensive repairs to both bldgs.

Bldgs.02700 and 22630
Property Number: 21201210080
Fort Drum
Fort Drum NY 13602
Status: Underutilized
Comments: off-site removal only; sf. varies; current use: varies; need repairs

Bldg. 1345
Property Number: 21201220030
Ft. Drum
Ft. Drum NY
Status: Underutilized
Comments: off-site removal only; 7,219 sf.; vehicle maint. shop. extensive repairs needed; secured area; need prior approval to access property

5 Properties
Property Number: 21201220031
Ft. Drum
Ft. Drum NY 13602
Location: BRG02, BRG19, BRG38, BRG62, BRG63
Status: Unutilized
Comments: off-site removal only; sf varies; bridge; poor conditions; needs repairs; secured area; prior approval needed to access properties

Building 191
Property Number: 21201230005
First Street West
Ft. Drum NY 13602
Status: Unutilized
Comments: off-site removal only; 5,922 sf.; use: Admin.; extensive structural damage;

remediation required before occupying bldg.; secured area; contact Army to schedule appt. to access property

5 Buildings
Property Number: 21201230006
Ft. Drum
Ft. Drum NY 13601
Location: 1454, 1456,2443,4890,4893
Status: Unutilized
Comments: off-site removal only; sf. varies; use; varies; extensive repairs needed due to age; secured area; contact Army re: details on accessing property

Building 1560
Property Number: 21201240024
Rte. 293
West Point NY 10996
Status: Unutilized
Comments: off-site removal only, 4544 sf., storage severely damage from hurricane Irene, restricted area, contact Army on information on accessibility/removal.

Building 2104
Property Number: 21201240030
West Point
West Point NY 10996
Status: Unutilized
Comments: off-site removal only, 2,000 sf., office for red cross, good condition, restricted area, contact army on info. on accessibility/removal.

4 Buildings
Property Number: 21201240037
Ft. Drum
Ft. Drum NY 13602
Location: BRG28, 22374, 22354, 22254
Status: Unutilized
Comments: Off-site removal only, poor conditions, restricted area, contact Army for accessibility/removal & specific details on a property.

3 Buildings
Property Number: 21201240045
Ft. Drum
Ft. Drum NY 13602
Location: 2069,2080,21354
Status: Unutilized
Comments: off-site removal only, sf. varies, moderate deterioration, restricted area, contact Army for ≤information on accessibility/removal & specific details on a particular property

NORTH CAROLINA

BUILDING

Building 42843
Property Number: 21201240034
Ft. Bragg
Ft. Bragg NC 28310
Location: 42843
Status: Underutilized
Comments: Located in a secured area, public access is denied and no alternative method to gain access without compromising national security.

OHIO

BUILDING

125 Property Number: 21201230025
1155 Buckeye Rd.
Lima OH 45804
Location: Joint Systems Manufacturing Center
Status: Underutilized
Comments: off-site removal only; 2,284 sf.; use: storage; poor conditions; asbestos identified; secured area; contact Army re: accessibility requirements

LAND

Land
Property Number: 21200340094
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Status: Excess
Comments: 11 acres, railroad access

OKLAHOMA

BUILDING

Bldg. T–838, Fort Sill
Property Number: 21199220609
838 Macomb Road
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 151 sq. ft., wood frame, 1 story, off-site removal only, most recent use—vet facility (quarantine stable).

Bldg. T–954, Fort Sill
Property Number: 21199240659
954 Quinette Road
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 3571 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—motor repair shop.

Bldg. T–3325, Fort Sill
Property Number: 21199240681
3325 Naylor Road
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 8832 sq. ft., 1 story wood frame, needs rehab, off-site use only, most recent use—warehouse.

Bldg. T–4226
Property Number: 21199440384
Fort Sill
Lawton Co: Comanche OK 73503
Status: Unutilized
Comments: 114 sq. ft., 1-story wood frame, possible asbestos and lead paint, most recent use—storage, off-site use only

Bldg. P–1015,
Fort Sill Property Number: 21199520197
Lawton Co: Comanche OK 73501–5100
Status: Unutilized
Comments: 15402 sq. ft., 1-story, most recent use—storage, off-site use only

Bldg. P–366, Fort Sill
Property Number: 21199610740
Lawton Co: Comanche OK 73503
Status: Unutilized
Comments: 482 sq. ft., possible asbestos, most recent use—storage, off-site use only

Building P–5042
Property Number: 21199710066
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 119 sq. ft., possible asbestos and lead paint, most recent use—heat plant, off-site use only

4 Buildings
Property Number: 21199710086
Fort Sill
Lawton Co: Comanche OK 73503–5100
Location:
T–6465, T–6466, T–6467, T–6468
Status: Unutilized
Comments: various sq. ft., possible asbestos and lead paint, most recent use—range support, off site use only

Bldg. T–810
Property Number: 21199730350
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 7205 sq. ft., possible asbestos/lead paint, most recent use—hay storage, off-site use only

Bldgs. T–837, T–839
Property Number: 21199730351
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, offsite use only

Bldg. P–934
Property Number: 21199730353
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 402 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–1468, T–1469
Property Number: 21199730357
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 114 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–1470
Property Number: 21199730358
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 3120 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–1954, T–2022
Property Number: 21199730362
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: approx. 100 sq. ft. each, possible asbestos/lead paint, most recent use—storage, offsite use only

Bldg. T–2184
Property Number: 21199730364
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 454 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–2186, T–2188, T–2189
Property Number: 21199730366
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 1656—3583 sq. ft., possible asbestos/lead paint, most recent use—vehicle maint. shop, off-site use only

Bldg. T–2187
Property Number: 21199730367
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 1673 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–2291 thru T–2296
Property Number: 21199730372
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 400 sq. ft. each, possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. T–3001, T–3006
Property Number: 21199730383
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: approx. 9300 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–3314
Property Number: 21199730385
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 229 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. T–5041
Property Number: 21199730409
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 763 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only
Comments: 763 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–5420
Property Number: 21199730414
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 189 sq. ft., possible asbestos/lead paint, most recent use—fuel storage, off-site use only

Bldg. T–7775
Property Number: 21199730419
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 1452 sq. ft., possible asbestos/lead paint, most recent use—private club, off-site use only

4 Bldgs.
Property Number: 21199910133
Fort Sill
P–617, P–1114, P–1386, P–1608
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 106 sq. ft., possible asbestos/lead paint, most recent use—utility plant, off-site use only

Bldg. P–746
Property Number: 21199910135
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 6299 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. P–2582
Property Number: 21199910141
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 3672 sq. ft., possible asbestos/lead paint, most recent use—admin., off-site use only

Bldg. P–2914
Property Number: 21199910146
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 1236 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–5101
Property Number: 21199910153
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 82 sq. ft., possible asbestos/lead paint, most recent use—gas station, off-site use only

Bldg. S–6430
Property Number: 21199910156
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 2080 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only

Bldg. T–6461
Property Number: 21199910157
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 200 sq. ft., possible asbestos/lead paint, most recent use—range support, off-site use only

Bldg. T–6462
Property Number: 21199910158
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 64 sq. ft., possible asbestos/lead paint, most recent use—control tower, off-site use only

Bldg. P–7230
Property Number: 21199910159
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 160 sq. ft., possible asbestos/lead paint, most recent use—transmitter bldg., off-site use Only

Bldg. S–4023
Property Number: 21200010128
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 1200 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. P–747
Property Number: 21200120120
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 9232 sq. ft., possible asbestos/lead paint, most recent use—lab, off-site use only

Bldg. P–842
Property Number: 21200120123
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 192 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. T–911
Property Number: 21200120124
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 3080 sq. ft., possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. P–1672
Property Number: 21200120126
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 1056 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. S–2362
Property Number: 21200120127
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 64 sq. ft., possible asbestos/lead paint, most recent use—gatehouse, off-site use only

Bldg. P–2589
Property Number: 21200120129
Fort Sill
Lawton Co: Comanche OK 73503–5100
Status: Unutilized
Comments: 3672 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldgs. 00937, 00957
Property Number: 21200710104
Fort Sill
Lawton OK 73501
Status: Unutilized
Comments: 1558 sq. ft., most recent use—storage shed off-site use only

Bldg.01514
Property Number: 21200710105
Fort Sill
Lawton OK 73501
Status: Unutilized
Comments: 1602 sq. ft., most recent use—storage, off-site use only

Bldg. 05685
Property Number: 21200820152
Fort Sill
Lawton OK 73501
Status: Unutilized
Comments: 24,072 sq. ft., concrete block/w brick, off-site use only

Bldg. 07480
Property Number: 21200920002
Fort Sill
Lawton OK 73501
Status: Unutilized
Comments: 1200 sq. ft., most recent use—recreation, off-site use only

Bldgs. 01509, 01510
Property Number: 21200920060
Fort Sill
Lawton OK 73501
Status: Unutilized
Comments: various sq. ft., most recent use—vehicle maint. shop, off-site use only

4 Bldgs.
Property Number: 21200920061
Fort Sill
2591, 2593, 2595, 2604
Lawton OK 73501
Status: Unutilized
Comments: various sq. ft., most recent use—classroom/admin, off-site use only

Bldg. 06456
Property Number: 21200930003
Fort Sill
Lawton OK 73501
Status: Unutilized
Comments: 413 sq. ft. range support facility, off-site use only

Fort Sill (5 Bldgs.)
Property Number: 21201110022
2583–87 Currie Road
Lawton Co: Comanche OK 73501–5100
Location: Bldgs.: 02583, 02584, 02585, 02586, 02587
Status: Unutilized
Comments: Off-site removal only, sq. ft. varies; current use varies

Fort Sill (5 Bldgs.)
Property Number: 21201110023
Currie Road
Lawton Co: Comanche OK 73501–5100
Location: Bldgs. 02588, 02769, 02770, 02771, 02950
Status: Unutilized
Comments: Off-site removal only, sq. ft. varies; current use varied

Bldgs. 02990 & 05020
Property Number: 21201110024
Fort Sill
Lawton Co: Comanche OK 73501–5100
Status: Unutilized
Comments: Off-site removal only, bldg. 02990—3,715 sq. ft. and bldg. 05020–6,682 sq. ft.; current use fast food facility and storage.

3 Bldgs.
Property Number: 21201210089
Bateman Rd, Fort Sill
Lawton Co: Comanche OK 73501
Location: 1511, 1518, 1519
Status: Unutilized
Comments: Off site removal only; various uses (dispatch bldgs. and admin/shop control)

6 Bldgs.
Property Number: 21201210090
Currie Rd, Fort Sill
Lawton Co: Comanche OK 73501
Location: 2524, 2590, 2592, 2593, 2595, 2596
Status: Unutilized
Comments: Off site removal only; various uses

4 Bldgs.
Property Number: 21201210091
Ringgold Rd, Fort Sill
Lawton Co: Comanche OK 73501
Location: 2776, 2919, 2920, 2921
Status: Unutilized
Comments: Off site removal only; various uses

OKLAHOMA

BUILDING

9 Bldgs.
Property Number: 21201210092
Fort Sill
Lawton Co: Comanche OK 73501
Location: 02914, 02924, 02927, 02930, 02936, 02952, 03685, 04702, 05485
Status: Unutilized
Comments: Off site removal only; various uses

4 Buildings
Property Number: 21201230052
Ft. Sill
Lawton OK 73501
Location: 2285,3168,2916,2915
Status: Unutilized
Comments: off-site removal only; sf. varies; use: varies; fair conditions; contact Army re: further details

20 Building
Property Number: 21201240021
Ft. Sill
Ft. Sill OK 73503
Location: 456, 3457, 3460, 3462, 3463, 3466, 3467, 3468, 3470, 3472, 3473, 3476, 3477, 3479, 6009, 6010, 6012, 6014, 6015, 6018
Status: Unutilized
Comments: Off-site removal only, sf varies, fair conditions, contact Army for info on specific details on a particular property.

29 Buildings
Property Number: 21201240028
Ft. Sill
Ft. Sill OK 73503
Location: 1,344, 2522, 2525, 2597, 2598, 2599, 2772, 2774, 2775, 2777, 3355, 3357, 3358, 3360, 3361, 3362, 3363, 3364, 3368, 3401, 3402, 3403, 3404, 3405, 3451, 3452, 3453, 3454
Status: Unutilized
Comments: Off-site removal only, sf. varies, fair conditions, contact Army for specific details for a particular property.

Building 3356
Property Number: 21201240050
Burrill Rd.
Ft. Sill OK 73503
Status: Unutilized
Comments: off-site removal only; 10,839 sf.; vech. maint. shop; 6 mons. vacant; moderate conditions

PUERTO RICO

BUILDING

3 Building
Property Number: 21201240041
Ft. Buchanan
Guaynabo PR 00934
Location: 19,234,294
Status: Excess
Comments: Off-site removal only, sf. varies, deteriorated, restricted aria, contact Army for information on accessibility/removal, specific on a particular property.

Building 293
Property Number: 21201240049
Crane Loop
Ft. Buchanan PR 00934
Status: Excess
Comments: off-site removal only; 54 sf.; ready magazine; 24 mons. vacant; restricted area; deteriorated; contact Army for accessibility/removal requirements

SOUTH DAKOTA

BUILDING

Bldg. 03001
Property Number: 21200740187
Jonas H. Lien AFRC
Sioux Falls SD 57104
Status: Unutilized
Comments: 33282 sq. ft., most recent use—training center

Bldg. 03003
Property Number: 21200740188
Jonas H. Lien AFRC
Sioux Falls SD 57104
Status: Unutilized
Comments: 4675 sq. ft., most recent use—vehicle maint. shop

TENNESSEE

BUILDING

Bldg. 530
Property Number: 21201220033
VTS SMYRNA
Smyrna TN 37167
Status: Excess
Comments: off-site removal only; 1,200 sf; storage; need repairs; need prior approval to access property

LAND

Parcel No. 1
Property Number: 21200920003
Fort Campbell
Tract No. 13M–3
Montgomery TN 42223
Status: Excess
Comments: 6.89 acres/thick vegetation

Parcel No. 2
Property Number: 21200920004
Fort Campbell
Tract Nos. 12M–16B & 13M–3
Montgomery TN 42223
Status: Excess
Comments: 3.41 acres/wooded

Parcel No. 3
Property Number: 21200920005
Fort Campbell
Tract No. 12M–4
Montgomery TN 42223
Status: Excess
Comments: 6.56 acre/wooded

Parcel No. 4
Property Number: 21200920006
Fort Campbell
Tract Nos 10M–22 & 10M–23
Montgomery TN 42223
Status: Excess
Comments: 5.73 acres/wooded

Parcel No. 5
Property Number: 21200920007
Fort Campbell
Tract No. 10M–20
Montgomery TN 42223
Status: Excess
Comments: 3.86 acres/wooded

Parcel No. 7
Property Number: 21200920008
Fort Campbell
Tract No. 10M–10
Montgomery TN 42223
Status: Excess
Comments: 9.47 acres/wooded

Parcel No. 8
Property Number: 21200920009
Fort Campbell
Tract No. 8M–7
Montgomery TN 42223
Status: Excess
Comments: 15.13 acres/wooded

Parcel No. 6
Property Number: 21200940013
Fort Campbell
Hwy 79
Montgomery TN 42223
Status: Excess
Comments: 4.55 acres, wooded w/dirt road/ fire break

TEXAS

BUILDING

Bldg. 92043
Property Number: 21200020206
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Comments: 450 sq. ft., most recent use—storage, off-site use only

Bldg. 92044
Property Number: 21200020207
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Comments: 1920 sq. ft., most recent use—admin., off-site use only

Bldg. 92045
Property Number: 21200020208
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Comments: 2108 sq. ft., most recent use—maint., off-site use only

Bldgs. P6220, P6222
Property Number: 21200330197
Fort Sam Houston
Camp Bullis
San Antonio Co: Bexar TX
Status: Unutilized
Comments: 384 sq. ft., most recent use—carport/storage, off-site use only

TEXAS

BUILDING

Bldgs. P6224, P6226
Property Number: 21200330198
Fort Sam Houston
Camp Bullis
San Antonio Co: Bexar TX
Status: Unutilized
Comments: 384 sq. ft., most recent use—carport/storage, off-site use only

Bldg. 92039
Property Number: 21200640101
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Excess
Comments: 80 sq. ft., most recent use—storage, off-site use only

Bldgs. 04281, 04283
Property Number: 21200720085
Fort Hood
Bell TX 76544
Status: Excess
Comments: 4000/8020 sq. ft., most recent use—storage shed off-site use only

Bldg. 04285
Property Number: 21200720087
Fort Hood
Bell TX 76544
Status: Excess
Comments: 8000 sq. ft., most recent use—storage shed, off-site use only

Bldg. 04286
Property Number: 21200720088
Fort Hood
Bell TX 76544
Status: Excess
Comments: 36,000 sq. ft., presence of asbestos, most recent use—storage shed, off-site use only

Bldg. 04291
Property Number: 21200720089
Fort Hood
Bell TX 76544
Status: Excess
Comments: 6400 sq. ft., presence of asbestos, most recent use—storage shed, off-site use only

Bldg. 4410
Property Number: 21200720090
Fort Hood
Bell TX 76544
Status: Excess
Comments: 12,956 sq. ft., presence of asbestos, most recent use—simulation center, off-site use only

Bldgs. 10031, 10032, 10033
Property Number: 21200720091
Fort Hood
Bell TX 76544
Status: Excess
Comments: 2578/3383 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldg. 56435
Property Number: 21200720093
Fort Hood
Bell TX 76544
Status: Excess
Comments: 3441 sq. ft., presence of asbestos, most recent use—barracks, off-site use only

Bldg. 05708
Property Number: 21200720094
Fort Hood
Bell TX 76544
Status: Excess
Comments: 1344 sq. ft., most recent use—community center, off-site use only

Bldg. 93013 Property Number: 21200720099
Fort Hood
Bell TX 76544
Status: Excess
Comments: 800 sq. ft., most recent use—club, off-site use only

4 Bldgs.
Property Number: 21200810048
Fort Hood
Bell TX 76544
Location: 00229, 00230, 00231, 00232
Status: Unutilized
Comments: various sq. ft., presence of asbestos, most recent use—training aids center, off-site use only

Bldg. 00324
Property Number: 21200810049
Fort Hood
Bell TX 76544
Status: Unutilized
Comments: 13,319 sq. ft., most recent use—roller skating rink, off-site use only

Bldgs. 00710, 00739, 00741
Property Number: 21200810050
Fort Hood
Bell TX 76544
Status: Unutilized
Comments: various sq. ft., presence of asbestos, most recent use—repair shop, off-site use only

Bldg. 00713
Property Number: 21200810052
Fort Hood
Bell TX 76544
Status: Unutilized
Comments: 3200 sq. ft., presence of asbestos, most recent use—hdqts. bldg., off-site use only

Bldgs. 1938, 04229
Property Number: 21200810053
Fort Hood
Bell TX 76544
Status: Unutilized
Comments: 2736/9000 sq. ft., presence of asbestos, most recent use—admin., off-site use only

Bldgs. 02218, 02220
Property Number: 21200810054
Fort Hood
Bell TX 76544
Status: Unutilized
Comments: 7289/1456 sq. ft., presence of asbestos, most recent use—museum, off-site use only

Bldg. 0350
Property Number: 21200810055
Fort Hood
Bell TX 76544
Status: Unutilized
Comments: 28,290 sq. ft., presence of asbestos, most recent use—vehicle. maint. shop, off-site use only

Bldg. 04449
Property Number: 21200810056
Fort Hood
Bell TX 76544
Status: Unutilized
Comments: 3822 sq. ft., most recent use—police station, off-site use only

Bldg. 91077
Property Number: 21200810057
Fort Hood
Bell TX 76544
Status: Unutilized
Comments: 3200 sq. ft., presence of asbestos, most recent use—educational facility, off-site use only

Bldg. 57005
Property Number: 21200840073
Fort Hood
Bell TX 76544
Status: Excess
Comments: 500 sq. ft., presence of asbestos, most recent use—water supply/treatment, off-site use only

B–42
Property Number: 21201210007
Fort Hood
Ft. Hood TX 76544
Status: Excess
Comments: off-site removal only; 893 sq. ft.; current use: storage; asbestos identified

B–2319
Property Number: 21201210010
Fort Hood
Ft. Hood TX 76544
Status: Unutilized
Comments: off-site removal only; 1,339 sq. ft.; current use: exchange cafe; asbestos identified

B–4237
Property Number: 21201210011
Fort Hood
Ft. Hood TX 76544
Status: Unutilized
Comments: off-site removal only; 7,840 sq. ft.; current use: storage; asbestos identified

2 Bldgs.
Property Number: 21201210012
Fort Hood
Ft. Hood TX 76544
Location:

4238, 4239
Status: Unutilized
Comments: off-site removal only; sq. ft. varies; current use: varies; asbestos identified

6 Bldgs.
Property Number: 21201210013
Fort Hood
Ft. Hood TX 76544
Location:
4240, 4241, 4253, 4254, 4271, 4444
Status: Unutilized
Comments: off-site removal only; sq. ft. varies; current use: varies; asbestos identified

2 Bldgs.
Property Number: 21201210014
Fort Hood
Ft. Hood TX 76544
Location:
5652, 56272
Status: Unutilized
Comments: off-site removal only; sq. ft. varies; current use: varies

4 Bldgs.
Property Number: 21201210015
Fort Hood
Ft. Hood TX 76544
Location:
4428, 4437, 4452, 56423
Status: Unutilized
Comments: off-site removal; sq. ft. varies; current use: varies; asbestos identified

B–1301
Property Number: 21201220001
Ft. Bliss
Ft. Bliss TX 79916
Status: Underutilized
Comments: off-site removal only; 18,739 sf.; current use: thrift shop; poor conditions; need repairs

Bldg. 7194
Property Number: 21201220002
Ft. Bliss
Ft. Bliss TX 79916
Status: Unutilized
Comments: off-site removal only; 2,125 sf.; current use: housing; poor conditions—need repairs; asbestos & lead identified; need remediation

2 Buildings
Property Number: 21201230012
West Ft. Hood
Ft. Hood TX 76544
Location:
90047 & 92080
Status: Excess
Comments: off-site removal only; 1,680 sf. (90047); 1,059 sf. (92080); restricted military installation; contact Army re: accessibility

6 Buildings
Property Number: 21201230057
Ft. Hood
Ft. Hood TX 76544
Location:
9541, 4478, 9511, 41003, 41002, 70005
Status: Excess
Comments: off-site removal only; need repairs; asbestos identified in some bldgs.; restricted area; prior permission to access & relocate; contact Army for details on specific bldgs.

Building 11142
Property Number: 21201240009
SSG Sims Rd.
Ft. Bliss TX 79916
Status: Excess
Comments: off-site removal only; 12,644 sf.; mess hall; poor conditions; limited public access; contact Army for info. on accessibility/removal

Building 6951
Property Number: 21201240010
11331 Montana Ave.
Ft. Bliss TX 79916
Status: Excess
Comments: off-site removal only; 288 sf.; utility bldg.; poor conditions; limited public access; contact Army for info. on accessibility/removal

Building 6942
Property Number: 21201240011
11331 Montana Ave.
Ft. Bliss TX 79916
Status: Excess
Comments: off-site removal only; 1,059 sf.; storage; poor conditions; limited public access; contact Army for info. on accessibility/removal

Bldg. 2432
Property Number: 21201240013
Carrington Rd.
Ft. Bliss TX 79916
Status: Excess
Comments: off-site removal only; 180 sf.; dispatch bldg.; poor conditions; limited public access; asbestos/lead identified; contact Army for info. on accessibility/removal

Building 50
Property Number: 21201240014
50 Slater Rd.
Ft. Bliss TX 79916
Status: Excess
Comments: off-site removal only; 9,900 sf.; office; poor conditions; limited public access; asbestos/lead identified; contact Army for info. on accessibility/removal

2 Building
Property Number: 21201240044
Ft. Hood
Ft. Hood TX 76544
Location:
706, 4286
Status: Excess
Comments: Off-site removal only, sf. varies, fair conditions, asbestos, restricted area, contact Army for accessibility/removal & specific details on a property.

LAND

1 acre
Property Number: 21200440075
Fort Sam Houston
San Antonio Co: Bexar TX 78234
Status: Excess
Comments: 1 acre, grassy area

UTAH

BUILDING

Bldg. 00001 Property Number: 21200740196
Borgstrom Hall USARC
Ogden UT 84401
Status: Excess
Comments: 16543 sq. ft., most recent use—training center, off-site use only

Bldg. 00002
Property Number: 21200740197
Borgstrom Hall USARC
Ogden UT 84401
Status: Excess
Comments: 3842 sq. ft., most recent use—vehicle maint. shop, off-site use only

Bldg. 00005
Property Number: 21200740198
Borgstrom Hall USARC
Ogden UT 84401
Status: Excess
Comments: 96 sq. ft., most recent use—storage, off-site use only

VERMONT

BUILDING

Bldg. 126
Property Number: 21201220035
Ethan Allen Firing Range
Jericho VT 05465
Status: Unutilized
Comments: off-site removal only; 1,680 sf.; Admin.; extremely poor conditions; need repairs

VIRGINIA

BUILDING

Fort Story
Property Number: 21200720065
Ft. Story VA 23459
Status: Unutilized
Comments: 525 sq. ft., most recent use—power plant, off-site use only

Bldg. 01633
Property Number: 21200720076
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Comments: 240 sq. ft., most recent use—storage, off-site use only

Bldg. 02786
Property Number: 21200720084
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Comments: 1596 sq. ft., most recent use—admin., off-site use only

Bldg. P0838
Property Number: 21200830005
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Comments: 576 sq. ft., most recent use—rec shelter, off-site use only

8 Bldgs.
Property Number: 21201220004
Ft. Belvoir
Ft. Belvoir VA 22060
Location:
808, 1150, 1197, 2303, 2903, 2905, 2907, 3137
Status: Excess
Comments: off-site removal only; sf. varies; usage varies; good to poor conditions; may require repairs; contact Army for more details on specific properties

9 Buildings
Property Number: 21201240003
Ft. Belvoir
Ft. Belvoir VA 22060
Location:
358, 361, 1140, 1141, 1142, 1143, 1498, 1499, 2302
Status: Unutilized
Comments: off-site removal only; sf. varies; Admin.; fair conditions; located in

restricted area; contact Army for info. on accessibility/removal & specific info. on a property

WASHINGTON

BUILDING

Bldg. U001C
Property Number: 21199920238
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 960 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—supply, off-site use only

2 Bldgs.
Property Number: 21199920239
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Location:
U002C, U005C
Status: Excess
Comments: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—range house, off-site use only

Bldg. U018C
Property Number: 21199920248
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Unutilized
Comments: 48 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. U039B
Property Number: 21199920260
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 1600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—grandstand/bleachers, off-site use only

Bldg. U039C
Property Number: 21199920261
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 600 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

Bldg. U115A
Property Number: 21199920275
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 36 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—tower, off-site use only

Bldg. U507A
Property Number: 21199920276
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 400 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—support, off-site use only

Bldg. C0120
Property Number: 21199920281
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 384 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—scale house, off-site use only

Bldg. 1445
Property Number: 21199920294
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 144 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—generator bldg., off-site use only

Bldgs. 03099
Property Number: 21199920296
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: various sq. ft., needs repair, presence of asbestos/lead paint, most recent use—sentry station, off-site use only

Bldg. 4040
Property Number: 21199920298
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 8326 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—shed, off-site use only

Bldg. 6191
Property Number: 21199920303
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 3663 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—exchange branch, off-site use only

Bldgs. 08076
Property Number: 21199920304
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 3660/412 sq. ft., needs repair, presence of asbestos/lead paint, off-site use only

Bldg. 8956
Property Number: 21199920308
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Status: Excess
Comments: 100 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—storage, off-site use only

4 Bldgs.
Property Number: 21201210087
Joint Base Louis McChord
Lewis-McChord Co: Pierce WA 98433
Location:
J0053, 00794, 09791, 09989
Status: Unutilized
Comments: off-site removal only; sf varies; current use: varies; need repairs

7903
Property Number: 21201230023
Plant Rd.
JBLM WA 98433
Status: Unutilized
Comments: 169 sf.; use: access control facility; extensive repairs needed; secured area; contact Army re: accessibility requirements.

E1302 & R7610
Property Number: 21201230028
JBLM
JBLM WA 98433
Status: Unutilized
Comments: 80 sf. (E1302); 503 sf. (R7610); use: varies; major repairs needed; secured area; contact Army re: accessibility requirements

4 Buildings
Property Number: 21201230042
Main Post

WISCONSIN

BUILDING

11 Buildings
Property Number: 21201240019
Ft. McCoy
Ft. McCoy WI 54656
Location:
2120, 2122, 2124, 2140, 2142, 2144, 2146, 2148, 2197, 2677, 9056
Status: Excess
Comments: Off-site removal only, sf varies, fair conditions, lead-based paint, restricted area, contact Army for accessibility/removal & specific details on a property.

13 Building
Property Number: 21201240020
Ft. McCoy
Ft. McCoy WI 54656
Location:
716, 717, 738, 753, 754, 1248, 1249.1250, 1251, 1616, 1617, 1738, 1739
Status: Unutilized
Comments: off-site removal only, sf. varies, fair conditions, asbestos, restricted area, contact Army for information on accessibility removal and details on a particular property.

Buildings 237 and 2118
Property Number: 21201240023
Ft, McCoy
Ft. McCoy WI 54656
Location:
237, 2118
Status: Excess
Comments: Off-site removal only 6,138 sf., vehicle maintained bldg., fair conditions; lead-base paint, restricted area, contacts Army for information on removal requirements.

COE

CONNECTICUT

BUILDING

Garage
Property Number: 31201240005
Colebrook River Lake
Riverton CT 06065
Status: Underutilized
Comments: off-site removal only; 635 sf.; storage; major renovations needed

IOWA

BUILDING

Fee Booth
Property Number: 31201210001
Bridge View Park
Melrose IA 52569
Status: Unutilized
Comments: off-site removal only; 180 sq. ft.; current use: fee booth; need repairs—walls deteriorating due to moisture

Fee Booth
Property Number: 31201210002
Buck Creek Park
Moravia IA 52571
Status: Unutilized
Comments: off-site removal only; 180 sq. ft.; current use: fee booth; need repairs—walls deteriorating due to moisture

Fee Booth

Property Number: 31201210003
Prairie Ridge Park
Moravia IA 52571
Status: Underutilized
Comments: off-site removal only; 180 sq. ft.; current use: fee booth; need repairs— walls contaminated with mold

KANSAS

BUILDING

Shower/Latrine
Property Number: 31201210004
Stockdale Park
Manhattan KS 66502
Status: Underutilized
Comments: off-site removal only; 576 sq. ft.; current use: shower/toilet; need repairs— bldg. deteriorating

2 Single Privies
Property Number: 31201210005
Spillway State Park
Manhattan KS 66502
Status: Underutilized
Comments: off-site removal only; 72 sq. ft.; current use: toilet; need major repairs— bldgs. are deteriorating

Comfort Station
Property Number: 31201210006
Tuttle Creek Cove
Manhattan KS 66502
Status: Underutilized
Comments: off-site removal only; 312 sq. ft.; current use: toilet; need major repairs— bldg. is deteriorating

2 Vault
Toilets Property Number: 31201210007
Stockdale Park
Manhattan KS
Status: Underutilized
Comments: off-site removal only; 80 sq. ft.; current use: toilet; bldgs. are deteriorating— need major repairs

Sun Dance Park
Property Number: 31201220011
31051 Melvern Lake Pkwy
Melvern KS 66510
Status: Underutilized
Comments: 133 sf.; bathroom; poor to fair conditions; fairly significant deterioration on interior wood frame in several places

MISSOURI

BUILDING

W. Hwy Vault Toilet
Property Number: 31201220004
US Army COE
Smithville MO 64089
Status: Underutilized
Comments: Available for off-site removal; 100 sf.; current use: toilet; need extensive repairs

St. Louis District
Property Number: 31201220014
Wappapello Lake Project Office
Wappapello MO 63966
Status: Unutilized
Comments: 376.69 sf.; comfort station; significant structural issues; need repairs

NEW MEXICO

BUILDING

Abiquiu Lake Project Office
Property Number: 31201240004
USACE
Abiquiu NM
Status: Unutilized
Comments: off-site removal only; 165 sf.; vault-type comfort station; repairs needed

NORTH CAROLINA

BUILDING

Well House
Property Number: 31201240002
Property ID # BEJ–17942
B.E. Jordon Dam& Lake NC
Status: Unutilized
Comments: vacant; poor conditions; need repairs

OKLAHOMA

BUILDING

Robert S. Kerr Lake
Property Number: 31201220005
HC 61 Box 238
Sallisaw OK 74955
Status: Unutilized
Comments: off-site removal only; 704 sf.; current use: bathroom; needs repairs

OKLAHOMA

BUILDING

5 Buildings
Property Number: 31201230002
RS Kerr Lake
Sallisaw OK 74955
Location:
42863, 42857,42858,42859,42860
Status: Underutilized
Comments: off-site removal only; 264 sf.; use: vault toilet; excessive vegetation; severe damage from vandals

Oologah Lake
Property Number: 31201240003
Spencer Creek
Oologah OK 74053
Status: Underutilized
Comments: off-site removal only; 576 sf.; picnic shelter; repairs needed

LAND

Keystone Lake
Property Number: 31201220007
USACE Tract No. 2424
Keystone OK
Status: Excess
Comments: .013 acres; current use: civil works land; contact COE for further conditions

SOUTH DAKOTA

BUILDING

Big Bend Project
Property Number: 31201240001
33573 N. Shore Rd.
Chamberlin SD 57325
Status: Unutilized
Comments: off-site removal only; 221 sf. (w/ porch), office; poor conditions; severe mold

TEXAS

BUILDING

Restroom
Property Number: 31201240006
2000 FM 2271
Belton TX 76513
Status: Unutilized
Comments: off-site removal only; 850 sf.; 12 mons. vacant; poor conditions

WASHINGTON

BUILDING

Residence, Central Ferry Park
Property Number: 31201220008
1001 Little Goose Dam Rd.
Dayton WA 99328
Status: Unutilized
Comments: off-site removal only; 1,500 sf.; residence; good conditions; an access easement is required through a real estate instrument

Restroom, Central Ferry Park
Property Number: 31201220009
1001 Little Goose Dam Rd.
Dayton WA 99328
Status: Unutilized
Comments: off-site removal only; 2,457 sf.; restroom; good conditions; an access easement is required through a real estate instrument

Restroom, Central Ferry Park
Property Number: 31201220010
1001 Little Goose Dam Rd.
Dayton WA 99328
Location: Boat Ramp Area
Status: Unutilized
Comments: off-site removal only; 420 sf.; restroom; good conditions; an access easement is required through a real estate instrument

Restroom, Central Ferry Park
Property Number: 31201220012
1001 Little Goose Dam Rd.
Dayton WA 99328
Status: Unutilized
Comments: off-site removal only; 660 sf.; restroom; an access easement is required through a real estate instrument

Restroom, Illia Dunes
Property Number: 31201220013
1001 Little Goose Dam Rd.
Dayton WA 99328
Status: Unutilized
Comments: off-site removal only; 220 sf.; restroom

INTERIOR

MARYLAND

3 Bldgs.
Residential Dwellings
Cheverly MD
Property Number: 61201210020
Status: Unutilized
Directions: 3601, 3603, 3605
Comments: off-site removal only; sq. ft. varies; current use: residential; poor conditions—need extensive repairs

COAST GUARD

ALASKA

BUILDING

Mustang Moorings Bldg. 17003
Property Number: 88201220003
1320 Fourth Ave.
Seward AK 99664
Status: Unutilized
Comments: off-site removal only; 2,205 sf.; storage/office/workshop; fair conditions; need repairs

NEW JERSEY

BUILDING

Two Housing Units

Property Number: 88201210002
USCG Detachment Sandy Hook
Highlands NJ 07732
Location: 141 and 142
Status: Underutilized
Comments: off-site removal only; 5,262 sq. ft. each; current use: housing

Housing Unit
Property Number: 88201210003
USCG Detachment Sandy Hook
Highlands NJ 07732
Status: Underutilized
Comments: off-site removal only; 12,924 sq. ft.; current use: storage

NEW YORK

BUILDING

Four Multi- Unit Apts.
Property Number: 88201210001
Fort Wadsworth
Staten Island NY 10305
Status: Underutilized
Comments: off-site removal only; sq. ft. varies; current use: residential; bldgs. are not energy sufficient

Housing Unit
Property Number: 88201220002
154 Lighthouse Dr.
Saugerties NY 23477
Status: Unutilized
Comments: off-site removal only; 1,610 sf.; housing; exposed to extensive flooding; severe mold issues; extensive repairs needed; secured area; prior approval needed to access property

OREGON

BUILDING

2 Bldgs.
Property Number: 88201210005
Group North Bend
N. Bend OR 97459
Location: Bldg. and Rec. Deck
Status: Excess
Comments: off-site removal only; 3,842 sf. for bldg.; 1,650 sf. for rec deck; current use; office and training room; poor conditions-need repairs

ENERGY

NEW YORK
BUILDING
Bldg. 0589
Property Number: 41201210002
Brookhaven Nat'l Lab
Upton NY 11973
Status: Unutilized
Comments: off-site removal only; 60 sq. ft.; current use: storage; poor conditions—signs of decay; need repairs

GSA

BUILDING

ALASKA

3 Buildings
Barrow Magnetic Observatory
Barrow AK 99723
Property Number: 54201240011
Status: Excess
GSA Number: 9AK–I–0842
Directions:
STORAGE: 309 sf.; SENSOR BLDG.: 225 sf.; ABSOLUTE BLDG.:166 sf
Comments: off-site removal only; total sf. 700; good to poor conditions; major renovations needed to make bldgs. ideal to occupy; lead/asbestos; contact GSA for more info. on accessibility/removal

NEBRASKA

BUILDING

Hummel Park Radio Station
11808 John Pershing Dr.
Omaha NE 68112
Property Number: 54201240005
Status: Surplus
GSA Number: 7–D–NE–0536
Comments: Period of availability extended to ensure outreach/notification from GSA; bldg. 1,040 sf.; sits on 4.87 acres +\-; support for antenna operations; good conditions

New York

Bldg. 0589
Brookhaven Nat'l Lab
Upton NY 11973
Landholding Agency: Energy
Property Number: 41201210002
Status: Unutilized
Comments: off-site removal only; 60 sq. ft.; current use: storage; poor conditions—signs of decay; need repairs

LAND

CALIFORNIA

Hydro Electric Power Plant
1402 San Rogue Rd.
Santa Barbara CA 93105
Property Number: 54201240009
Status: Excess
GSA Number: 9–I–CA–1693
Reason: Advertised for sale
Comments: .0997 acres; behind secured gate for Lauro Dame & Reservoir; will impact conveyance; contact GSA for more details

MICHIGAN

FAA Outer Marker
Ash Rd. East of Clark Rd.
New Boston MI 48164
Property Number: 54201230009
Status: Excess
GSA Number: 1–U–MI–0840
Comments: .24 acres; located in a rural area; neighboring farm fields

LAND

MICHIGAN

FAA Outer Marker
N. Side of Avondale St., W. of Tobin Dr.
Inkster MI 48141
Property Number: 54201230010
Status: Excess
GSA Number: 1–U–MI–0841
Comments: .55 acres; located in a residential area; flat & glassy; public park located north of property

TENNESSEE

Fort Campbell Army Garrison
U.S. Hwy 79
Woodlawn TN 37191
Property Number: 54201240010
Status: Excess
GSA Number: 4–D–TN–586–2
Comments: 8 parcels; 3.41 to 13.90 acres; agricultural; adjacent to Ft. Campbell-U.S. Army Garrison; parcel 7 identified as wetlands; contact GSA for more details on specific property

LAND

UTAH

BLM Kanab Field Office
318 N. 100 East
Kanab UT 84741
Property Number: 54201230012
Status: Surplus
GSA Number: 7–I–UT–0528
Directions: includes 6,192 sf. office bldg.; 4,800 sf. warehouse; 1,120 sf. storage/shed on property
Comments: 2.8 acre w/three bldgs.; access to property by appt. only; friable asbestos; remediation needed

NAVY

CALIFORNIA

BUILDING

Bldg. R5
Property Number: 77201220004
Naval Air Station, North Island
San Diego CA 92135
Status: Excess
Comments: off-site removal only; 720 sf.; current use: training classroom/admin. office; very poor conditions; needs extensive repairs; secured area; transferee will need prior approval to access property

R4
Property Number: 77201220009
Naval Air Station
San Diego CA 92135
Status: Excess
Comments: off-site removal; 720 sf.; current use: training rm.; poor conditions; need extensive repairs; secured area; transferee will need prior approval to access property

GUAM

BUILDING

Bldg. 6121
Property Number: 77201230010
U.S. Naval Base
PITI GU 96540
Status: Unutilized
Comments: off-site removal only; 234 sf.; bathroom; deteriorating conditions; major renovations needed; restricted area; visitor's pass required & issued by Security Dept.

Bldg. 6120
Property Number: 77201230011
Recreation Pavilion
PITI GU 96540
Status: Excess
Comments: off-site removal only; 286 sf.; deteriorating conditions; major renovations needed; restricted area; visitor's pass required & issued by Security Dept.

Bldg. 793
Property Number: 77201230012
Fern St.
Santa Rita GU 96540
Status: Excess
Comments: off-site removal only; 2,411 sf.; bachelor enlisted quarters; deteriorating conditions; major renovations needed; restricted area; vistior's pass required & issued by Sec. Dept.

16 Buildings
Property Number: 77201230013
S. Columbus Ave./Lotus Cir/Fern St.
Santa Rita GU 96540

Location: 766 thru 768, 770 thru 773, 775 thru 777, 794, 795, 797 thru 800
Status: Excess
Comments: off-site removal only; 2,562 sf. per bldg. Deteriorating conditions; renovations needed; bachelor enlisted quarters; restricted area; visitor's pass required & issued by Security Dept.

13 Buildings
Property Number: 77201230014
Jasmin/South Columbus/Lotus Circle St.
Santa Rita GU 96540
Location: 754 thru 761,781,782,784 thru 786
Status: Excess
Comments: off-site removal only 2,038 sf. per bldg.; bachelor enlisted quarters; deteriorating conditions; major renovations needed; restricted area; visitor's pass required & issued by Security Dept.

17 Buildings
Property Number: 77201230015
South Tipalao
Santa Rita GU 96540
Location: 733, 735, 736, 737, 738, 739, 740, 741, 742, 744, 746, 747, 748, 749, 750, 751, 752
Status: Excess
Comments: off-site removal only; 2,038 sf. per bldg.; bachelor enlisted quarters; deteriorating conditions; major renovations needed; restricted area; visitor's pass required issued by Security Dept.

8 Buildings
Property Number: 77201230016
Begonia St.
Santa Rita GU 96540
Location: 717,718,719,720,721,725,726,727
Status: Excess
Comments: off-site removal only; 2,038 sf. per bldg.; bachelor enlisted quarters; major renovations needed; restricted area; visitor's pass required & issued by Security Dept.

3 Buildings
Property Number: 77201230018
Anthurium St.
Santa Rita GU 96540
Location: 703,704,705
Status: Excess
Comments: off-site removal only; 2,562 sf. per bldg.; bachelor enlisted quarters; deteriorating conditions; major renovations needed; restricted area; vistior's pass required & issued by Security Dept.

9 Buildings
Property Number: 77201230019
Anthurium St.
Santa Rita GU 96540
Location: 701,706,707,708,709,710,711,712,713
Status: Excess
Comments: off-site removal only; 2,038 sf. per bldg.; bachelor enlisted quarters; deteriorating conditions; major renovations needed; restricted pass required & issued by Security Dept.

Bldg. 612
Property Number: 77201230020
Leary St., South Tipalao
Santa Rita GU 96540
Status: Excess
Comments: off-site removal only; 6,280 sf.; bachelor enlisted quarters; deteriorating conditions; major renovations needed; restricted pass required & issued by Security Dept.

Bldg. 605
Property Number: 77201230021
U.S. Naval Base
Santa Rita GU 96540
Location: Leary Street, South Tipalao
Status: Excess
Comments: off-site removal only; 4,776 sf.; bachelor enlisted quarters; deteriorating conditions; major renovations needed; restricted pass required & issued by Security Dept.

Bldg. 603
Property Number: 77201230022
U.S. Naval Base
Santa Rita GU 96540
Location: Leary Street, South Tipalao
Status: Excess
Comments: off-site removal only; 3,672 sf.; bachelor enlisted quarters; deteriorating conditions; major renovations needed; restricted pass required & issued by Security Dept.

7 Buildings
Property Number: 77201230023
Leary Street, South Tipalao
Santa Rita GU 96540
Location: 602,604,606,607,608,609,610
Status: Excess
Comments: off-site removal only; 3,164 sf. per bldg.; bachelor enlisted quarters; deteriorating conditions; major renovations needed; restricted pass required & issued by Security Dept.

Bldg. 601
Property Number: 77201230024
U.S. Naval Base
Santa Rita GU 96540
Location: Leary Street, South Tipalao
Status: Excess
Comments: off-site removal only; 2,906 sf.; bachelor enlisted quarters; deteriorating conditions; major renovations needed; restricted pass required & issued by Security Dept.

Bldg. 27
Property Number: 77201230025
U.S. Naval Base
Santa Rita GU 96540
Status: Unutilized
Comments: off-site removal only; 1,750 sf.; steam plant; deteriorating conditions; major renovations needed; restricted pass required & issued by Security Dept.

ILLINOIS

BUILDING

Building 103
Property Number: 77201240005
2510 Luce Blvd.
Great Lakes IL 60088
Status: Unutilized
Comments: off-site removal only 5,531 sf., public shop, vacant since Jan, 2011, poor condition, lead/asbestos identified, secure area, contact Navy information on accessibility/removal.

NEVADA

BUILDING

Building 60
Property Number: 77201240007
4755 Pasture Rd.
Fallon NV 89496
Status: Unutilized
Comments: off-site removal only; 1,584 sf.; retail store; 1 mon. vacant; repairs required; restricted area; contact Navy for info. re: accessibility/removal reqs.

VIRGINIA

BUILDING

Building 3074
Property Number: 77201240003
Epperson Avenue
Quantico VA 22134
Status: Excess
Comments: off-site removal only 7,705 sf. office, very poor conditions, secured area, contact Navy for information on accessibility/removal.

Building 3074
Property Number: 77201240004
Epperson Avenue
Quantico VA 22134
Status: Excess
Comments: off-site removal only 7,705 sf. office, very poor conditions, secured area, contact Navy or information on accessibility/removal.

TITLE V, PROPERTIES REPORTED IN YEAR 2012 WHICH ARE SUITABLE AND UNAVAILABLE

AIR FORCE

CALIFORNIA

BUILDING

Bldg. 5435
Property Number: 18201140041
Davis Ave.
Barksdale CA 71101
Status: Underutilized
Reason: express of interest

COLORADO

BUILDING

AF Academy
Property Number: 18201140026
8010 Sage Brush Dr.
USAF Academy CO 80840
Status: Unutilized
Reason: disposal in progress

NEW YORK

BUILDING

Bldg. 302
Property Number: 18200340026
Rome Lab
Rome Co: Oneida NY 13441
Status: Unutilized
Reason: occupied

SOUTH DAKOTA

LAND

Tract 133
Property Number: 18200310004
Ellsworth AFB
Box Elder Co: Pennington SD 57706
Status: Unutilized
Reason: Special Legislation

Tract 67
Property Number: 18200310005
Ellsworth AFB
Box Elder Co: Pennington SD 57706
Status: Unutilized
Reason: mission purpose

WASHINGTON

BUILDING

Bldg. 404/Geiger Heights
Property Number: 18200420002
Fairchild AFB
Spokane WA 99224
Status: Unutilized
Reason: mission effort

11 Bldgs./Geiger Heights
Property Number: 18200420003
Fairchild AFB
Spokane WA 99224
Status: Unutilized
Reason: mission effort

Bldg. 297/Geiger Heights
Property Number: 18200420004
Fairchild AFB
Spokane WA 99224
Status: Unutilized
Reason: mission effort

9 Bldgs./Geiger Heights
Property Number: 18200420005
Fairchild AFB
Spokane WA 99224
Status: Unutilized
Reason: mission effort

22 Bldgs./Geiger Heights
Property Number: 18200420006
Fairchild AFB
Spokane WA 99224
Status: Unutilized
Reason: mission effort

51 Bldgs./Geiger Heights
Property Number: 18200420007
Fairchild AFB
Spokane WA 99224
Status: Unutilized
Reason: mission effort

Bldg. 402/Geiger Heights
Property Number: 18200420008
Fairchild AFB
Spokane WA 99224
Status: Unutilized
Reason: mission effort

5 Bldgs./Geiger Heights
Property Number: 18200420009
Fairchild AFB
222, 224, 271, 295, 260
Spokane WA 99224
Status: Unutilized
Reason: mission effort

5 Bldgs./Geiger Heights
Property Number: 18200420010
Fairchild AFB
102, 183, 118, 136, 113
Spokane WA 99224
Status: Unutilized
Reason: mission effort

Army

ALABAMA

BUILDING

22 Buildings
Redstone Arsenal
Redstone Arsenal AL 35898
Landholding Agency: Army
Property Number: 21201220053
Status: Excess
Directions: 1418, 1417, 1400, 1419, 1420, 1423, 1424, 1426, 1427, 1428, 1429, 1430, 1433, 1434, 1435, 1436, 1437, 3410, 3411, 3412, 3413, 7310
Reason: occupied

ARIZONA

BUILDING

Bldg. 22529
Property Number: 21200520077
Fort Huachuca
Cochise AZ 85613–7010
Status: Excess
Reason: occupied

Bldg. 22541
Property Number: 21200520078
Fort Huachuca
Cochise AZ 85613–7010
Status: Excess
Reason: occupied

Bldg. 30020
Property Number: 21200520079
Fort Huachuca
Cochise AZ 85613–7010
Status: Excess
Reason: occupied

Bldg. 30021
Property Number: 21200520080
Fort Huachuca
Cochise AZ 85613–7010
Status: Excess
Reason: occupied

Bldg. 22040
Property Number: 21200540076
Fort Huachuca
Cochise AZ 85613
Status: Excess
Reason: occupied

Bldg. 22540
Property Number: 21200620067
Fort Huachuca
Cochise AZ 85613–7010
Status: Excess
Reason: occupied

CALIFORNIA

BUILDING

Bldg. 00352
Property Number: 21200240031
Fort Irwin
Ft. Irwin Co: San Bernardino CA 92310
Status: Unutilized
Reason: currently being utilized by the Army

COLORADO

BUILDING

Bldg. S6285
Property Number: 21200420176
Fort Carson
Ft. Carson Co: El Paso CO 80913
Status: Unutilized
Reason: in use

GEORGIA

BUILDING

Bldg. 5993
Property Number: 21200420041
Fort Benning
Ft. Benning Co: Chattahoochee GA 31905
Status: Excess
Reason: in use

Bldg. 5994
Property Number: 21200420042
Fort Benning
Ft. Benning Co: Chattahoochee GA 31905
Status: Excess
Reason: in use

Bldg. 5995
Property Number: 21200420043
Fort Benning
Ft. Benning Co: Chattahoochee GA 31905
Status: Excess
Reason: in use

Bldg. 09402
Property Number: 21200510003
Fort Benning
Ft. Benning Co: Chattahoochee GA 31905
Status: Excess
Reason: currently being utilized by the Army

LOUISIANA

BUILDING

Bldgs. T406, T407, T411
Property Number: 21200540085
Fort Polk
Ft. Polk LA 71459
Status: Unutilized
Reason: occupied

MARYLAND

BUILDING

Bldg. 8608
Property Number: 21200410099
Fort George G. Meade
Ft. Meade MD 20755–5115
Status: Unutilized
Reason: occupied

Bldg. 8612
Property Number: 21200410101
Fort George G. Meade
Ft. Meade MD 20755–5115
Status: Unutilized
Reason: occupied

Bldg. 1007
Property Number: 21200140085
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755
Status: Unutilized
Reason: occupied

Bldg. 294
Property Number: 21200140081
Ft. George G. Meade
Ft. Meade Co: Anne Arundel MD 20755
Status: Unutilized
Reason: occupied

Bldg. 2214
Property Number: 21200230054
Fort George G. Meade
Fort Meade Co: Anne Arundel MD 20755
Status: Unutilized
Reason: occupied

Bldg. 0001A
Property Number: 21200520114
Federal Support Center
Olney Co: Montgomery MD 20882
Status: Unutilized
Reason: occupied

Bldg. 0001C
Property Number: 21200520115
Federal Support Center
Olney Co: Montgomery MD 20882
Status: Unutilized
Reason: occupied

Bldgs. 00032, 00H14, 00H24
Property Number: 21200520116
Federal Support Center
Olney Co: Montgomery MD 20882
Status: Unutilized
Reason: occupied

Bldgs. 00034, 00H016
Property Number: 21200520117
Federal Support Center

Olney Co: Montgomery MD 20882
Status: Unutilized
Reason: occupied

Bldgs. 00H10, 00H12
Property Number: 21200520118
Federal Support Center
Olney Co: Montgomery MD 20882
Status: Unutilized
Reason: occupied

MICHIGAN

BUILDING

Bldg. 00001
Property Number: 21200510066
Sheridan Hall USARC
501 Euclid Avenue
Helena Co: Lewis MI 59601–2865
Status: Unutilized
Reason: Federal interest

MISSOURI

BUILDING

Bldg. 1230
Property Number: 21200340087
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: occupied

Bldg. 1621
Property Number: 21200340088
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: occupied

Bldg. 5760
Property Number: 21200410102
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: occupied

Bldg. 5762
Property Number: 21200410103
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: occupied

Bldg. 5763
Property Number: 21200410104
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: occupied

Bldg. 5765
Property Number: 21200410105
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: occupied

Bldg. 5760
Property Number: 21200420059
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: in use

Bldg. 5762
Property Number: 21200420060
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: in use

Bldg. 5763
Property Number: 21200420061
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: in use

Bldg. 5765
Property Number: 21200420062
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743–8944
Status: Unutilized
Reason: in use

Bldg. 00467
Property Number: 21200530085
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65743
Status: Unutilized
Reason: occupied

NEW YORK

BUILDING

Bldgs. 1511–1518
Property Number: 21200320160
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996
Status: Unutilized
Reason: occupied

Bldgs. 1523–1526
Property Number: 21200320161
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996
Status: Unutilized
Reason: occupied

Bldgs. 1704–1705, 1721–1722
Property Number: 21200320162
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996
Status: Unutilized
Reason: occupied

Bldg. 1723
Property Number: 21200320163
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996
Status: Unutilized
Reason: occupied

Bldgs. 1706–1709
Property Number: 21200320164
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996
Status: Unutilized
Reason: occupied

Bldgs. 1731–1735
Property Number: 21200320165
U.S. Military Academy
Training Area
Highlands Co: Orange NY 10996
Status: Unutilized
Reason: occupied

TEXAS

BUILDING

Bldg. 7137, Fort Bliss
Property Number: 21199640564
El Paso Co: El Paso TX 79916
Status: Unutilized
Reason: occupied

Building 6924
Property Number: 21201240012
11331 Montana Ave.
Ft. Bliss TX 79916
Status: Excess
Reason: occupied

Bldgs. 4219, 4227
Property Number: 21200220139
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Reason: admin use

Bldgs. 4229, 4230, 4231
Property Number: 21200220140
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Reason: admin use

Bldgs. 4244, 4246
Property Number: 21200220141
Fort Hood
Ft. Hood Co: Bell TX 76544
Status: Unutilized
Reason: admin use

Bldg. 04335
Property Number: 21200440090
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04468
Property Number: 21200440096
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 07002
Property Number: 21200440100
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 57001
Property Number: 21200440105
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldgs. 125, 126
Property Number: 21200620075
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 02240
Property Number: 21200620078
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04164
Property Number: 21200620079
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldgs. 04218, 04228
Property Number: 21200620080
Fort Hood
Bell TX 76544
Status: Excess

Reason: occupied

Bldg. 04272
Property Number: 21200620081
Fort Hood
Bell TX 76544
Status: Excess
Reason: not occupied

Bldg. 04415
Property Number: 21200620083
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04493
Property Number: 21200620091
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04494
Property Number: 21200620092
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04632
Property Number: 21200620093
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04640
Property Number: 21200620094
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 04645
Property Number: 21200620095
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 20121
Property Number: 21200620097
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 91052
Property Number: 21200620101
Fort Hood
Bell TX 76544
Status: Excess
Reason: occupied

Bldg. 1345
Property Number: 21200740070
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldgs. 1348, 1941
Property Number: 21200740071
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 1943
Property Number: 21200740073
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 1946
Property Number: 21200740074
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 4207
Property Number: 21200740076
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 4208
Property Number: 21200740077
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldgs. 4210, 4211, 4216
Property Number: 21200740078
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 4219A
Property Number: 21200740079
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 04252
Property Number: 21200740081
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 04480
Property Number: 21200740083
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 04485
Property Number: 21200740084
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 04489
Property Number: 21200740086
Fort Hood
Ft. Hood TX 76544
Status: Excess
Reason: utilized

Bldgs. 4491, 4492
Property Number: 21200740087
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldgs. 04914, 04915, 04916
Property Number: 21200740089
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 20102
Property Number: 21200740091
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 20118
Property Number: 21200740092
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 29027
Property Number: 21200740093
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 56017
Property Number: 21200740094
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 56202
Property Number: 21200740095
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 56224
Property Number: 21200740096
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 56329
Property Number: 21200740100
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 92043
Property Number: 21200740102
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 92072
Property Number: 21200740103
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 92083
Property Number: 21200740104
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldgs. 04213, 04227
Property Number: 21200740189
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg.4404
Property Number: 21200740190
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 56607
Property Number: 21200740191
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 91041
Property Number: 21200740192
Fort Hood
Bell TX 76544
Status: Excess

Reason: utilized

5 Bldgs.
Property Number: 21200740193
Fort Hood
93010, 93011, 93012, 93014
Bell TX 76544
Status: Excess
Reason: utilized

Bldg. 94031
Property Number: 21200740194
Fort Hood
Bell TX 76544
Status: Excess
Reason: utilized

VIRGINIA

BUILDING

Bldg. T2827
Property Number: 21200320172
Fort Pickett
Blackstone Co: Nottoway VA 23824
Status: Unutilized
Reason: occupied

Bldg. T2841
Property Number: 21200320173
Fort Pickett
Blackstone Co: Nottoway VA 23824
Status: Unutilized
Reason: occupied

Bldg. 01014
Property Number: 21200720067
Fort Story
Ft. Story VA 23459
Status: Unutilized
Reason: occupied

Bldg. 01063
Property Number: 21200720072
Fort Story
Ft. Story VA 23459
Status: Unutilized
Reason: occupied

Bldg. 00215
Property Number: 21200720073
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Reason: occupied

4 Bldgs.
Property Number: 21200720074
Fort Eustis
01514, 01523, 01528, 01529
Ft. Eustis VA 23604
Status: Unutilized
Reason: occupied

4 Bldgs.
Property Number: 21200720075
Fort Eustis
01534, 01542, 01549, 01557
Ft. Eustis VA 23604
Status: Unutilized
Reason: occupied

Bldgs. 01707, 01719
Property Number: 21200720077
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Reason: occupied

Bldg. 01720
Property Number: 21200720078
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Reason: occupied

Bldgs. 01721, 01725
Property Number: 21200720079
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Reason: occupied

Bldgs. 01726, 01735, 01736
Property Number: 21200720080
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Reason: occupied

Bldgs. 01734, 01745, 01747
Property Number: 21200720081
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Reason: occupied

Bldg. 01741
Property Number: 21200720082
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Reason: occupied

Bldg. 02720
Property Number: 21200720083
Fort Eustis
Ft. Eustis VA 23604
Status: Unutilized
Reason: occupied

WASHINGTON

BUILDING

2 Bldgs.
Property Number: 21199920273
Fort Lewis
Ft. Lewis Co: Pierce WA 98433
Location:
U015A, U024E
Status: Excess
Reason: occupied

GSA

ARKANSAS

BUILDING

Sulphur Rock Radio Station
N. Main Street
Sulphur Rock AR 72579
Property Number: 54201220008
Status: Excess
GSA Number: 7–B–AR–576–AA
Reason: Expression of interest

ARKANSAS

BUILDING

Winnesburg Radio Station
SW Side of State Hwy 18 & County Rd.
Cash AR 72421
Property Number: 54201230013
Status: Excess
GSA Number: 7–B–AR–0577
Reason: Advertised for Sale
Comments: 9′8″ × 15′5″; storage/office; fair conditions; need repairs

DISTRICT OF COLUMBIA

BUILDING

West Heating Plant
1051 29th St. NW
Washington DC 20007
Property Number: 54201140006
Status: Surplus
GSA Number: DC–497–1
Reason: Advertised for sale

FLORIDA

BUILDING

4 Structures
142 Keeper's Cottage Way
Cape San Blas FL 32456
Property Number: 54201230008
Status: Surplus
GSA Number: 4–D–FL–1265AA
Directions: Cape San Blas Lighthouse, Keeper's Quarters A, Keeper's Quarter B, & an Oil/Storage Shed
Reason: Conveyance pending

GEORGIA

BUILDING

5 Acres
Former CB7 Radio Communication
Townsend GA 31331
Property Number: 54201210008
Status: Excess
GSA Number: 4–U–GA–885AA
Reason: Advertised for sale

IDAHO

BUILDING

Moscow Federal Bldg.
220 East 5th Street
Moscow ID 83843
Property Number: 54201140003
Status: Surplus
GSA Number: 9–G–ID–573
Reason: Conveyance pending

ILLINOIS

BUILDING

1LT A.J. Ellison
Army Reserve
Wood River IL 62095
Property Number: 54201110012
Status: Excess
GSA Number: 1–D–II–738
Reason: Conveyance pending

IOWA

BUILDING

U.S. Army Reserve
620 West 5th St.
Garner IA 50438
Property Number: 54200920017
Status: Excess
GSA Number: 7–D–IA–0510
Reason: Advertised for sale

NRCS–USDA Unit
1820 E. Euclid Ave.
Des Moines IA 50313
Property Number: 54201240004
Status: Excess
GSA Number: 7–A–IA–0511–AA
Directions: includes 2 Bldgs.; masonry 2,048 sf. +/-, frame 5,513 sf. +/-
Reason: Expression of interest

MAINE

BUILDING

Columbia falls Radar Site
Tibbetstown Road
Columbia Falls ME 04623
Property Number: 54201140001
Status: Excess
GSA Number: 1–D–ME–0687
Directions: Buildings 1, 2, 3, and 4
Reason: Expression of interest

MARYLAND

BUILDING

Appraisers Store
Baltimore MD 21202
Property Number: 54201030016
Status: Excess
GSA Number: 4–G–MD–0623
Reason: Advertised for sale

MICHIGAN

BUILDING

CPT George S. Crabbe USARC
2901 Webber Street
Saginaw MI
Property Number: 54201030018
Status: Excess
GSA Number: 1–D–MI–835
Reason: Conveyance pending
Beaver Island High Level Site
South End Road
Beaver Island MI 49782
Property Number: 54201140002
Status: Excess
GSA Number: 1–X–MI–664B
Reason: Conveyance pending

MINNESOTA

BUILDING

Noyes Land Port of Entry
SW Side of US Rte. 75
Noyes MN 56740
Property Number: 54201230007
Status: Excess
GSA Number: 1–G–MN–0593
Directions: one main bldg.; one storage; approx. 16,000 and 900 sf. respectively
Reason: Expression of interest

MISSOURI

Nat'l Personnel Records Center
111 Winnebago
St. Louis MO 63118
Landholding Agency: GSA
Property Number: 54201220009
Status: Excess
GSA Number: 7–G–MO–0684
Reason: Advertised for sale
Crane Radio Station
Elm Street Rd.
Marionville MO 65633
Landholding Agency: GSA
Property Number: 54201240003
Status: Excess
GSA Number: 7–B–MO–0698
Reason: Advertised for sale

MONTANA

James F. Battin & Courthouse
316 North 26th Street
Billings MT 59101
Landholding Agency: GSA
Property Number: 54201210005
Status: Excess
GSA Number: 7–G–MT–0621–AB
Reason: Advertised for sale

NEVADA

BUILDING

Alan Bible Federal Bldg.
600 S. Las Vegas Blvd.
Las Vegas NV 89101
Property Number: 54201210009
Status: Excess
GSA Number: 9–G–NV–565
Reason: Expression of interest

NEW JERSEY

BUILDING

Camp Petricktown Sup. Facility
US Route 130
Pedricktown NJ 08067
Property Number: 54200740005
Status: Excess
GSA Number: 1–D–NJ–0662
Reason: Expression of interest
New Mexico

Building

USDA/NRCS Grants Field Office
117 N. Silver
Grants NM 87020
Property Number: 54201220011
Status: Surplus
GSA Number: 7–A–NM–0604
Reason: Expression of interest

NORTH CAROLINA

BUILDING

Greenville Site
10000 Cherry Run Rd.
Greenville NC 27834
Property Number: 54201210002
Status: Unutilized
GSA Number: 4–2–NC–0753
Reason: Expression of interest

OHIO

BUILDING

Oxford USAR Facility
6557 Todd Road
Oxford OH 45056
Property Number: 54201010007
Status: Excess
GSA Number: 1–D–OH–833
Reason: Advertised for sale

Army Reserve Center
5301 Hauserman Rd.
Parma OH 44130
Property Number: 54201020009
Status: Excess
GSA Number: I–D–OH–842
Reason: Conveyance pending

LTC Dwite Schaffner
U. S. Army Reserve Center
1011 Gorge Blvd.
Akron OH 44310
Property Number: 54201120006
Status: Excess
GSA Number: 1–D–OH–836
Reason: Expression of interest

OKLAHOMA

BUILDING

Lamar Radio Station
S. of County Rd.
Lamar OK 74850
Property Number: 54201240002
Status: Excess
GSA Number: 7–B–OK–0581
Reason: Advertised for sale

OREGON

BUILDING

3 Bldgs./Land
OTHR–B Radar
City Rd 514
Christmas Valley OR 97641
Property Number: 54200840003
Status: Excess
GSA Number: 9–D–OR–0768
Reason: Conveyance pending

PENNSYLVANIA

BUILDING

Old Marienville Compound
110 South Forest St.
Marienville PA 16239
Property Number: 54201230001
Status: Excess
GSA Number: 4–A–PA–808AD
Directions: 10 bldgs.; wood farm duplex; office/garage; pole bard; shop; (2) wood sheds; block shed; trailer; carport; toilet bldg.
Reason: Expression of interest

TEXAS

BUILDING

Veterans Post Office
1300 Mutamoros St.
Laredo TX 78040
Property Number: 54201240001
Status: Excess
GSA Number: 7–G–TX–1055–AA
Reason: Expression of interest

UTAH

BUILDING

2 Buildings
9160 N. Hwy 83
Corinne UT 84307
Property Number: 54201230003
Status: Excess
GSA Number: 7–Z–UT–0533
Directions: T077 & T078; NASA Shuttle Storage Warehouses
Reason: Advertised for sale

WASHINGTON

BUILDING

Log House
281 Fish Hatchery Rd.
Quilcene WA 98376
Property Number: 54201220006
Status: Excess
GSA Number: 9–I–WA–1260
Reason: Advertise for sale

WISCONSIN

BUILDING

Wausau Army Reserve Ctr.
1300 Sherman St.
Wausau WI 54401
Property Number: 54201210004
Status: Excess
GSA Number: 1–D–WI–610
Reason: Expression of interest

LAND

ARIZONA

LAND
95th Ave/Bethany Home Rd
Glendale AZ 85306
Property Number: 54201010014
Status: Surplus
GSA Number: 9–AZ–852
Reason: Expression of interest

0.30 acre
Bethany Home Road
Glendale AZ 85306
Property Number: 54201030010
Status: Excess
GSA Number: 9–I–AZ–0859
Reason: Expression of interest

CALIFORNIA

Drill Site #3A

Ford City CA 93268
Property Number: 54201040004
Status: Surplus
GSA Number: 9–B–CA–1673–AG
Reason: Advertised for sale

Drill Site #4
Ford City CA 93268
Property Number: 54201040005
Status: Surplus
GSA Number: 9–B–CA–1673–AB
Reason: Advertised for sale

Drill Site #6
Ford City CA 93268
Property Number: 54201040006
Status: Surplus
GSA Number: 9–B–CA–1673–AC
Reason: Advertised for sale

Drill Site #9
Ford City CA 93268
Property Number: 54201040007
Status: Surplus
GSA Number: 9–B–CA–1673–AH
Reason: Advertised for sale

Drill Site #20
Ford City CA 93268
Property Number: 54201040008
Status: Surplus
GSA Number: 9–B–CA–1673–AD
Reason: Advertised for sale

Drill Site #22
Ford City CA 93268
Property Number: 54201040009
Status: Surplus
GSA Number: 9–B–CA–1673–AF
Reason: Conveyance pending

Drill Site #24
Ford City CA 93268
Property Number: 54201040010
Status: Surplus
GSA Number: 9–B–CA–1673–AE
Reason: Conveyance pending

Drill Site #26
Ford City CA 93268
Property Number: 54201040011
Status: Surplus
GSA Number: 9–B–CA–1673–AA
Reason: Advertised for sale

Seal Beach RR Right of Way
West 19th Street
Seal Beach CA 90740
Property Number: 54201140015
Status: Surplus
GSA Number: 9–N–CA–1508–AF
Reason: Expression of interest

Seal Beach RR Right of Way
East 17th Street
Seal Beach CA 90740
Property Number: 54201140016
Status: Surplus
GSA Number: 9–N–CA–1508–AB
Reason: Expression of interest

Seal Beach RR Right of Way
East of 16th Street
Seal Beach CA 90740
Property Number: 54201140017
Status: Surplus
GSA Number: 9–N–CA–1508–AG
Reason: Expression of interest

Seal Beach RR Right of Way
West of Seal Beach Blvd.
Seal Beach CA 90740
Property Number: 54201140018
Status: Surplus
GSA Number: 9–N–CA–1508–AA
Reason: Expression of interest

Seal Beach RR Right of Way
Seal Beach
Seal Beach CA 90740
Property Number: 54201210006
Status: Surplus
GSA Number: 9–N–CA–1508–AH
Reason: Expression of interest

Seal Beach RR Right of Way
Seal Beach
Seal Beach CA 90740
Property Number: 54201210007
Status: Surplus
GSA Number: 9–N–CA–1508–AJ
Reason: Expression of interest

ILLINOIS

Former Outer Marker Compass
2651 West 83rd Place
Chicago IL
Property Number: 54201220002
Status: Excess
GSA Number: 1–U–I–797
Reason: Advertise for sale

KANSAS

1.64 Acres
Wichita Automated Flight Service
Anthony KS 67003
Property Number: 54201230002
Status: Excess
GSA Number: 7–U–KS–0526
Reason: Advertised for sale

PENNSYLVANIA

approx. 16.88
271 Sterrettania Rd.
Erie PA 16506
Landholding Agency: GSA
Property Number: 54200820011
Status: Surplus
GSA Number: 4–D–PA–0810
Reason: Advertised for sale

MASSACHUSETTS

FAA Site
Massasoit Bridge Rd.
Nantucket MA 02554
Property Number: 54200830026
Status: Surplus
GSA Number: MA–0895
Reason: Expression of Interest

MISSOURI

Long Branch Lake
30174 Visitor Center Rd.
Macon MO 63552
Property Number: 54201230006
Status: Surplus
GSA Number: 7–D–MO–0579
Reason: Expression of Interest
SWPA—Jenkins Antenna Site
Barry County
Jenkins MO
Property Number: 54201230011
Status: Surplus
GSA Number: 7–B–MO–0696
Reason: Advertised for sale

NEVADA

RBG Water Project Site
Bureau of Reclamation
Henderson NV 89011
Property Number: 54201140004
Status: Surplus
GSA Number: 9–I–AZ–0562
Reason: Expression of interest

NORTH DAKOTA

Vacant Land of MSR Site
Stanley Mickelsen
Nekoma ND
Property Number: 54201130009
Status: Surplus
GSA Number: 7–D–ND–0499
Reason: Advertised for sale

Interior

ALABAMA

BUILDING

Tract 101–02; Trailer
1616 Chappie James Ave.
Tuskegee AL 36083
Property Number: 61201240008
Status: Unutilized
Reason: disposal pending

Travel Trailer
Horseshoe Bend Nat'l Park
Daviston AL 36256
Property Number: 61201230013
Status: Unutilized
Reason: Disposal pending

Silver Hill Rock House
Buffalo Nat'l River
St. Joe AR 72875
Property Number: 61201240010
Status: Excess
Directions:
Tract 06–126–1
Reason: disposal pending

CALIFORNIA

BUILDING

Nob Hill Shower House
Yosemite Nat'l Park
Yosemite CA 95389
Property Number: 61201230007
Status: Unutilized
Reason: disposal pending

MISSISSIPPI

BUILDING

Tract 102–12A
516 ½ South Canal St.
Natchez MS 39120
Property Number: 61201240022
Status: Unutilized
Reason: disposal pending

Tract 102–11B
516 South Canal St.
Natchez MS 39120
Property Number: 61201240023
Status: Unutilized
Directions:
Natchez Nat'l Historical Park
Reason: Disposal pending

Tract 102–11A
516 South Canal St.
Natchez MS 39120
Property Number: 61201240027
Status: Unutilized
Directions:
Natchez Nat'l Historic Park
Reason: Disposal pending

Tract 29666
209 Water Plant Rd.
Ocracoke NC 27960
Property Number: 61201240001
Status: Unutilized
Directions:

Cape Hatteras Nat'l Seashore
Reason: Disposal pending

Tract 29665
199 Water Plant Rd.
Ocracoke NC 27960
Property Number: 61201240002
Status: Unutilized
Reason: Disposal pending

NORTH CAROLINA

BUILDING

Tract 29664
189 Water Plant Rd.
Ocracoke NC 27960
Property Number: 61201240003
Status: Unutilized
Directions:
Cape Hatteras Nat'l Seashore
Reason: Disposal pending

Tract 29960
221 Water Plant Rd.
Ocracoke NC 27960
Property Number: 61201240004
Status: Unutilized
Directions:
Cape Hatteras Nat'l Seashore
Reason: Disposal pending

Tract 59930
214 Dare Ave.
Manteo NC 27954
Landholding Agency: Interior
Property Number: 61201240006
Status: Unutilized
Reason: Disposal pending

NORTH CAROLINA

BUILDING

Tract 59929
216 Dare Ave.
Manteo NC 27954
Property Number: 61201240007
Status: Unutilized
Reason: Disposal pending

Tract 01–106
129 Green Acres Lane
Greensboro NC 27410
Property Number: 61201240015
Status: Unutilized
Directions:
Guilford Courthouse Nat'l Military Park
Reason: Disposal pending

Tract 01–134
121 Green Acres Lane
Greensboro NC 27410
Property Number: 61201240016
Status: Unutilized
Directions:
Guilford Courthouse Nat'l Military Park
Reason: Disposal pending

Tract 01–141
119 British Lakes Dr.
Greensboro NC 27410
Property Number: 61201240017
Status: Unutilized
Directions:
Guilford Courthouse Nat'l Military Park
Reason: Disposal pending

Tract 01–144 A
3500 Battleground Ave.
Greensboro NC 27410
Property Number: 61201240018
Status: Unutilized
Directions:
Guilford Courthouse Nat'l Military Park
Reason: Disposal pending

Tract 01–144B
103 British Lakes Dr.
Greensboro NC 27410
Property Number: 61201240025
Status: Unutilized
Directions:
Guilford Courthouse Nat'l Military Park
Reason: Disposal pending

Tract 01–162
107 British Lakes Dr.
Greensboro NC 27410
Property Number: 61201240026
Status: Unutilized
Directions:
Guilford Courthouse Nat'l Military Park
Reason: Disposal pending

PENNSYLAVIA

BUILDING

Tract 101–30
4501 County Line Rd.
King of Prussia PA 19406
Landholding Agency: Interior
Property Number: 61201240009
Status: Excess
Reason: Disposal pending

Tract 05–151
1198 Taneytown Rd.
Gettysburg PA 17325
Landholding Agency: Interior
Property Number: 61201240028
Status: Excess
Reason: Disposal pending

OREGON

BOR Land
Hyatt Lake Safe Property
Hyatt Reservoir Area
Ashland OR
Landholding Agency: Interior
Property Number: 61201240011
Status: Unutilized
Reason: Disposal pending

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Part IV

Department of Housing and Urban Development

24 CFR Part 100

Implementation of the Fair Housing Act's Discriminatory Effects Standard; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 100

[Docket No. FR–5508–F–02]

RIN 2529–AA96

Implementation of the Fair Housing Act's Discriminatory Effects Standard

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule.

SUMMARY: Title VIII of the Civil Rights Act of 1968, as amended (Fair Housing Act or Act), prohibits discrimination in the sale, rental, or financing of dwellings and in other housing-related activities on the basis of race, color, religion, sex, disability, familial status, or national origin.[1] HUD, which is statutorily charged with the authority and responsibility for interpreting and enforcing the Fair Housing Act and with the power to make rules implementing the Act, has long interpreted the Act to prohibit practices with an unjustified discriminatory effect, regardless of whether there was an intent to discriminate. The eleven federal courts of appeals that have ruled on this issue agree with this interpretation. While HUD and every federal appellate court to have ruled on the issue have determined that liability under the Act may be established through proof of discriminatory effects, the statute itself does not specify a standard for proving a discriminatory effects violation. As a result, although HUD and courts are in agreement that practices with discriminatory effects may violate the Fair Housing Act, there has been some minor variation in the application of the discriminatory effects standard.

Through this final rule, HUD formalizes its long-held recognition of discriminatory effects liability under the Act and, for purposes of providing consistency nationwide, formalizes a burden-shifting test for determining whether a given practice has an unjustified discriminatory effect, leading to liability under the Act. This final rule also adds to, and revises, illustrations of discriminatory housing practices found in HUD's Fair Housing Act regulations. This final rule follows a November 16, 2011, proposed rule and takes into consideration comments received on that proposed rule.

[1] This preamble uses the term ''disability'' to refer to what the Act and its implementing regulations term a ''handicap.'' Both terms have the same legal meaning. *See Bragdon* v. *Abbott,* 524 U.S. 624, 631 (1998).

DATES: *Effective Date:* March 18, 2013.

FOR FURTHER INFORMATION CONTACT: Jeanine Worden, Associate General Counsel for Fair Housing, Office of General Counsel, U.S. Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–0500, telephone number 202–402–5188. Persons who are deaf, are hard of hearing, or have speech impairments may contact this phone number via TTY by calling the Federal Relay Service at 800–877–8399.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of Regulatory Action

Need for the Regulation. This regulation is needed to formalize HUD's long-held interpretation of the availability of ''discriminatory effects'' liability under the Fair Housing Act, 42 U.S.C. 3601 *et seq.,* and to provide nationwide consistency in the application of that form of liability. HUD, through its longstanding interpretation of the Act, and the eleven federal courts of appeals that have addressed the issue agree that liability under the Fair Housing Act may arise from a facially neutral practice that has a discriminatory effect. The twelfth court of appeals has assumed that the Fair Housing Act includes discriminatory effects liability, but has not decided the issue. Through four decades of case-by-case application of the Fair Housing Act's discriminatory effects standard by HUD and the courts, a small degree of variation has developed in the methodology of proving a claim of discriminatory effects liability. This inconsistency threatens to create uncertainty as to how parties' conduct will be evaluated. This rule formally establishes a three-part burden-shifting test currently used by HUD and most federal courts, thereby providing greater clarity and predictability for all parties engaged in housing transactions as to how the discriminatory effects standard applies.

How the Rule Meets the Need. This rule serves the need described above by establishing a consistent standard for assessing claims that a facially neutral practice violates the Fair Housing Act and by incorporating that standard in HUD's existing Fair Housing Act regulations at 24 CFR 100.500. By formalizing the three-part burden-shifting test for proving such liability under the Fair Housing Act, the rule provides for consistent and predictable application of the test on a national basis. It also offers clarity to persons seeking housing and persons engaged in housing transactions as to how to assess potential claims involving discriminatory effects.

Legal Authority for the Regulation. The legal authority for the regulation is found in the Fair Housing Act. Specifically, section 808(a) of the Act gives the Secretary of HUD the ''authority and responsibility for administering this Act.'' (42 U.S.C. 3608(a)). In addition, section 815 of the Act provides that ''[t]he Secretary may make rules (including rules for the collection, maintenance, and analysis of appropriate data) to carry out this title. The Secretary shall give public notice and opportunity for comment with respect to all rules made under this section.'' (42 U.S.C. 3614a.) HUD also has general rulemaking authority, under the Department of Housing and Urban Development Act, to make such rules and regulations as may be necessary to carry out its functions, powers, and duties. (See 42 U.S.C. 3535(d).)

B. Summary of the Major Provisions

This rule formally establishes the three-part burden-shifting test for determining when a practice with a discriminatory effect violates the Fair Housing Act. Under this test, the charging party or plaintiff first bears the burden of proving its prima facie case that a practice results in, or would predictably result in, a discriminatory effect on the basis of a protected characteristic. If the charging party or plaintiff proves a prima facie case, the burden of proof shifts to the respondent or defendant to prove that the challenged practice is necessary to achieve one or more of its substantial, legitimate, nondiscriminatory interests. If the respondent or defendant satisfies this burden, then the charging party or plaintiff may still establish liability by proving that the substantial, legitimate, nondiscriminatory interest could be served by a practice that has a less discriminatory effect.

This rule also adds and revises illustrations of practices that violate the Act through intentional discrimination or through a discriminatory effect under the standards outlined in § 100.500.

C. Costs and Benefits

Because the rule does not change decades-old substantive law articulated by HUD and the courts, but rather formalizes a clear, consistent, nationwide standard for litigating discriminatory effects cases under the Fair Housing Act,[2] it adds no additional costs to housing providers and others engaged in housing transactions. Rather,

[2] *See* nn. 12, 28, *supra,* discussing HUD administrative decisions and federal court rulings.

the rule will simplify compliance with the Fair Housing Act's discriminatory effects standard and decrease litigation associated with such claims by clearly allocating the burdens of proof and how such burdens are to be met.

II. Background

The Fair Housing Act was enacted in 1968 (Pub. L. 90–284, codified at 42 U.S.C. 3601–3619, 3631) to combat and prevent segregation and discrimination in housing, including in the sale or rental of housing and the provision of advertising, lending, and brokerage services related to housing. The Fair Housing Act's ''Declaration of Policy'' specifies that ''[i]t is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States.'' [3] Congress considered the realization of this policy ''to be of the highest priority.'' [4] The Fair Housing Act's language prohibiting discrimination in housing is ''broad and inclusive;'' [5] the purpose of its reach is to replace segregated neighborhoods with ''truly integrated and balanced living patterns.'' [6] In commemorating the 40th anniversary of the Fair Housing Act and the 20th anniversary of the Fair Housing Amendments Act, the House of Representatives reiterated that ''the intent of Congress in passing the Fair Housing Act was broad and inclusive, to advance equal opportunity in housing and achieve racial integration for the benefit of all people in the United States.'' [7] (See the preamble to the November 16, 2011, proposed rule at 76 FR 70922.)

The Fair Housing Act gives HUD the authority and responsibility for administering and enforcing the Act,[8] including the authority to conduct formal adjudications of Fair Housing Act complaints [9] and the power to promulgate rules to interpret and carry out the Act.[10] In keeping with the Act's ''broad remedial intent,'' [11] HUD, as the following discussion reflects, has long interpreted the Act to prohibit practices that have an unjustified discriminatory effect, regardless of intent. (See also the preamble to the November 16, 2011, proposed rule at 76 FR 70922–23.)

In formal adjudications of charges of discrimination under the Fair Housing Act over the past 20 years, HUD has consistently concluded that the Act is violated by facially neutral practices that have an unjustified discriminatory effect on the basis of a protected characteristic, regardless of intent.[12] In one such formal adjudication, the Secretary of HUD reviewed the initial decision of a HUD administrative law judge and issued a final order stating that practices with an unjustified discriminatory effect violate the Act. In that case, the Secretary found that a mobile home community's occupancy limit of three persons per dwelling had a discriminatory effect on families with children.[13] When the housing provider appealed the Secretary's order to the United States Court of Appeals for the Tenth Circuit, the Secretary of HUD defended his order, arguing that statistics showed that the housing policy, while neutral on its face, had a discriminatory effect on families with children because it served to exclude them at more than four times the rate of families without children.[14] Similarly, on appeal of another final agency decision holding that a housing policy had a disparate impact on families with children,[15] the Secretary of HUD, in his brief defending the decision before the United States Court of Appeals for the Ninth Circuit, discussed in detail the text and legislative history of the Act, as well as prior pronouncements by HUD that proof of discriminatory intent is not required to establish liability under the Act.[16]

HUD has interpreted the Act to include discriminatory effects liability not only in formal adjudications, but through various other means as well. In 1980, for example, Senator Charles Mathias read into the Congressional Record a letter that the Senator had received from the HUD Secretary describing discriminatory effects liability under the Act and explaining that such liability is ''imperative to the success of civil rights law enforcement.'' [17] In 1994, HUD joined with the Department of Justice and nine other federal regulatory and enforcement agencies in approving and adopting a policy statement that, among other things, recognized that disparate impact is among the ''methods of proof of lending discrimination under the * * * [Fair Housing] Act.'' [18] In this Policy Statement on Discrimination in Lending (Joint Policy Statement), HUD and the other regulatory and enforcement agencies recognized that ''[p]olicies and practices that are neutral on their face and that are applied equally may still, on a prohibited basis, disproportionately and adversely affect a person's access to credit,'' and provided guidance on how to prove a disparate impact fair lending claim.[19]

Additionally, HUD's interpretation of the Act is further confirmed by regulations implementing the Federal Housing Enterprises Financial Safety and Soundness Act (FHEFSSA), in which HUD prohibited Fannie Mae and Freddie Mac from engaging in mortgage purchase activities that have a discriminatory effect in violation of FHEFSSA.[20] In addressing a concern for how the impact theory might operate under FHEFFSA, HUD explained that ''the disparate impact (or discriminatory effect) theory is firmly established by Fair Housing Act case law'' and concluded that this Fair Housing Act disparate impact law ''is applicable to all segments of the housing marketplace, including the GSEs'' (government-sponsored enterprises).[21] In

[3] 42 U.S.C. 3601.

[4] *Trafficante* v. *Metro. Life Ins. Co.,* 409 U.S. 205, 211 (1972) (internal citation omitted).

[5] Id. at 209.

[6] Id. at 211.

[7] H. Res. 1095, 110th Cong., 2d Sess., 154 Cong. Rec. H2280–01 (April 15, 2008) (2008 WL 1733432).

[8] *See* 42 U.S.C. 3608(a).

[9] *See* 42 U.S.C. 3610, 3612.

[10] *See* 42 U.S.C. 3614a.

[11] *Havens Realty Corp.* v. *Coleman,* 455 U.S. 363, 380 (1982).

[12] *See, e.g., HUD* v. *Twinbrook Village Apts.,* No. 02–00025600–0256–8, 2001 WL 1632533, at *17 (HUD ALJ Nov. 9, 2001) (''A violation of the [Act] may be premised on a theory of disparate impact.''); *HUD* v. *Carlson,* No. 08–91–0077–1, 1995 WL 365009 (HUD ALJ June 12, 1995) (''A policy or practice that is neutral on its face may be found to be violative of the Act if the record establishes a prima facie case that the policy or practice has a disparate impact on members of a protected class, and the Respondent cannot prove that the policy is justified by business necessity.''); *HUD* v. *Ross,* No. 01–92–0466–18, 1994 WL 326437, at *5 (HUD ALJ July 7, 1994) (''Absent a showing of business necessity, facially neutral policies which have a discriminatory impact on a protected class violate the Act.''); *HUD* v. *Carter,* No. 03–90–0058–1, 1992 WL 406520, at *5 (HUD ALJ May 1, 1992) (''The application of the discriminatory effects standard in cases under the Fair Housing Act is well established.'').

[13] *HUD* v. *Mountain Side Mobile Estates P'ship,* No. 08–92–0010–1, 1993 WL 307069 (HUD Sec'y July 19, 1993), aff'd in relevant part, 56 F.3d 1243 (10th Cir. 1995).

[14] Brief for HUD Secretary as Respondent, *Mountain Side Mobile Estates P'ship* v. *HUD,* No. 94–9509 (10th Cir. 1994).

[15] *HUD* v. *Pfaff,* No. 10–93–0084–8, 1994 WL 592199, at *17 (HUD ALJ Oct. 27, 1994), rev'd on other grounds, 88 F.3d 739 (9th Cir. 1996).

[16] Brief for HUD Secretary as Respondent, *Pfaff* v. *HUD,* No. 94–70898 (9th Cir. 1996).

[17] 126 Cong. Rec. 31,166–31,167 (1980) (statement of Sen. Mathias reading into the record letter of HUD Secretary).

[18] Policy Statement on Discrimination in Lending, 59 FR 18266, 18269 (Apr. 15, 1994) (''Joint Policy Statement'').

[19] *Id.*

[20] *See* 24 CFR 81.42 (2012).

[21] The Secretary of HUD's Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), 60 FR 61846, 61867 (Dec. 1, 1995).

promulgating this regulation, HUD also emphasized the importance of the Joint Policy Statement, explaining that ''[a]ll the Federal financial regulatory and enforcement agencies recognize the role that disparate impact analysis plays in scrutiny of mortgage lending'' and have ''jointly recognized the disparate impact standard as a means of proving lending discrimination under the Fair Housing Act.'' [22]

Consistent with its longstanding interpretation of the Act, over the past two decades, HUD has regularly issued guidance to its staff that recognizes the discriminatory effects theory of liability under the Act. For instance, HUD's Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) issued a memorandum in 1993 instructing HUD investigators to be sure to analyze complaints under the disparate impact theory of liability.[23] HUD's 1995 Title VIII Complaint Intake, Investigation and Conciliation Handbook (Enforcement Handbook), which set forth guidelines for investigating and resolving Fair Housing Act complaints, emphasized to HUD's enforcement staff that disparate impact is one of ''the principal theories of discrimination'' under the Fair Housing Act and required HUD investigators to apply it when appropriate.[24] HUD's 1998 version of the Enforcement Handbook, which is currently in effect, also recognizes the discriminatory effects theory of liability and requires HUD investigators to apply it in appropriate cases nationwide.[25]

In 1998, at Congress's direction, HUD published in the **Federal Register** previously-internal guidance from 1991 explaining when occupancy limits may violate the Act's prohibition of discrimination because of familial status, premised on the application of disparate impact liability.[26] More recently, HUD posted on its Web site guidance to its staff and others discussing how facially neutral housing policies addressing domestic violence can have a disparate impact on women in violation of the Act.[27]

Although several of the HUD administrative decisions, federal court holdings, and HUD and other federal agency public pronouncements on the discriminatory effects standard just noted were discussed in the preamble to HUD's November 16, 2011, proposed rule, HUD has described these events in the preamble to this final rule to underscore that this rule is not establishing new substantive law. Rather, this final rule embodies law that has been in place for almost four decades and that has consistently been applied, with minor variations, by HUD, the Justice Department and nine other federal agencies, and federal courts. In this regard, HUD emphasizes that the title of this rulemaking, ''Implementation of the Fair Housing Act's Discriminatory Effects Standard,'' indicates that HUD is not proposing new law in this area.

As discussed in the preamble to the proposed rule (76 FR 70921, 70923), all federal courts of appeals to have addressed the question agree that liability under the Act may be established based on a showing that a neutral policy or practice has a discriminatory effect even if such a policy or practice was not adopted for a discriminatory purpose.[28] There is minor variation, however, in how evidence has been analyzed pursuant to this theory. For example, in adjudications, HUD has always used a three-step burden-shifting approach,[29] as do many federal courts of appeals.[30] One federal court of appeals applies a multi-factor balancing test,[31] other courts of appeals apply a hybrid between the two,[32] and one court of appeals applies a different test for public and private defendants.[33]

Another source of variation in existing law is in the application of the burden-shifting test. Under the three-step burden-shifting approach applied by HUD and the courts, the plaintiff (or, in administrative adjudications, the charging party) first must make a prima facie showing of either a disparate impact or a segregative effect. If the discriminatory effect is shown, the burden of proof shifts to the defendant (or respondent) to justify its actions. If the defendant (or respondent) satisfies its burden, the third step comes into play. There has been a difference of approach among the various appellate courts and HUD adjudicators as to which party bears the burden of proof at this third step, which requires proof as to whether or not a less discriminatory alternative to the challenged practice exists. All but one of the federal courts of appeals that use a burden-shifting approach place the ultimate burden of proving that a less discriminatory alternative exists on the plaintiff,[34] with some courts analogizing to the burden-shifting framework established for Title VII of the Civil Rights Act of 1964 (Title VII), which addresses employment discrimination.[35] The remaining court of appeals places the burden on the

[22] *Id.*

[23] Memorandum from the HUD Assistant Secretary for Fair Housing & Equal Opportunity, The Applicability of Disparate Impact Analysis to Fair Housing Cases (Dec. 17, 1993).

[24] HUD, No. 8024.1, *Title VIII Complaint Intake, Investigation & Conciliation Handbook* at 7–12 (1995).

[25] HUD, No. 8024.1, *Title VIII Complaint Intake, Investigation & Conciliation Handbook* at 2–27 (1998) (''a respondent may be held liable for violating the Fair Housing Act even if his action against the complainant was not even partly motivated by illegal considerations''); *id.* at 2–27 to 2–45 (HUD guidelines for investigating a disparate impact claim and establishing its elements).

[26] *See* 63 FR 70256 (Dec. 18, 1998) (publishing ''Keating Memo'' regarding reasonable occupancy standards); Quality Housing and Work Responsibility Act of 1998, Public Law 105–276, 112 Stat. 2461, § 589 (Oct. 21, 1998) (requiring publication of Keating Memo).

[27] Memorandum from HUD Office of Fair Housing & Equal Opportunity, Assessing Claims of Housing Discrimination Under the Fair Housing Act & the Violence Against Women Act 5–6 (Feb. 9, 2011). *http://www.hud.gov/offices/fheo/library/11-domestic-violence-memo-with-attachment.pdf.*

[28] *See, e.g., Graoch Assocs. #33, L.P.* v. *Louisville/Jefferson Cnty. Metro Human Relations Comm'n,* 508 F.3d 366, 374–78 (6th Cir. 2007); *Reinhart* v. *Lincoln Cnty.,* 482 F.3d 1225, 1229 (10th Cir. 2007); *Hallmark Developers, Inc.* v. *Fulton County, Ga.,* 466 F.3d 1276, 1286 (11th Cir. 2006); *Charleston Hous. Auth.* v. *U.S. Dep't of Agric.,* 419 F.3d 729, 740–41 (8th Cir. 2005); *Langlois* v. *Abington Hous. Auth.,* 207 F.3d 43, 49–50 (1st Cir. 2000); *Simms* v. *First Gibraltar Bank,* 83 F.3d 1546, 1555 (5th Cir. 1996); *Jackson* v. *Okaloosa Cnty., Fla.,* 21 F.3d 1531, 1543 (11th Cir. 1994); *Keith* v. *Volpe,* 858 F.2d 467, 484 (9th Cir. 1988); *Huntington Branch, NAACP* v. *Town of Huntington,* 844 F.2d 926, 937–38 (2d Cir. 1988), aff'd, 488 U.S. 15 (1988) (per curiam); *Resident Advisory Bd.* v. *Rizzo,* 564 F.2d 126, 148 (3d Cir. 1977); *Betsey* v. *Turtle Creek Assocs.,* 736 F.2d 983, 987–89 & n.3 (4th Cir. 1984); *Metro. Hous. Dev. Corp.* v. *Vill. of Arlington Heights,* 558 F.2d 1283, 1290–91 (7th Cir. 1977); *United States.* v. *City of Black Jack,* 508 F.2d 1179, 1184–86 (8th Cir. 1974).

[29] *See, e.g., HUD* v. *Twinbrook Village Apts.,* No. 02–00025600–0256–8, 2001 WL 1632533, at *17 (HUD ALJ Nov. 9, 2001); *HUD* v. *Pfaff,* 1994 WL 592199, at *8 (HUD ALJ Oct. 27, 1994) rev'd on other grounds, 88 F.3d 739 (9th Cir. 1996); *HUD* v. *Mountain Side Mobile Estates P'ship,* 1993 WL 367102, at *6 (HUD ALJ Sept. 20, 1993); *HUD* v. *Carter,* 1992 WL 406520, at *6 (HUD ALJ May 1, 1992); *see also* Joint Policy Statement, 59 FR 18269.

[30] *See, e.g., Charleston,* 419 F.3d at 740–42; *Langlois,* 207 F.3d at 49–50; *Huntington Branch,* 844 F.2d at 939.

[31] *See, e.g., Metro. Hous. Dev. Corp.,* 558 F.2d at 1290 (applying a four-factor balancing test).

[32] *See, e.g., Graoch,* 508 F.3d at 373 (balancing test incorporated as elements of proof after second step of burden-shifting framework); *Mountain Side Mobile Estates* v. *Sec'y HUD,* 56 F.3d 1243, 1252, 1254 (10th Cir. 1995) (incorporating a three-factor balancing test into the burden-shifting framework to weigh defendant's justification);.

[33] The Fourth Circuit has applied a four-factor balancing test to public defendants and a burden-shifting approach to private defendants. *See, e.g., Betsey* v. *Turtle Creek Assocs.,* 736 F.2d 983, 989 n.5 (4th Cir. 1984).

[34] *Compare Mt. Holly Gardens Citizens in Action, Inc.* v. *Twp. of Mount Holly,* 658 F.3d 375, 382 (3d Cir. 2011) (burden of proving less discriminatory alternative ultimately on plaintiff), *and Gallagher* v. *Magner,* 619 F.3d 823, 834 (8th Cir. 2010) (same), *and Graoch,* 508 F.3d at 373–74 (same), *and Mountain Side Mobile Estates,* 56 F.3d at 1254 (same), *with Huntington Branch,* 844 F.2d at 939 (burden of proving no less discriminatory alternative exists on defendant).

[35] *See, e.g., Graoch,* 508 F.3d at 373 (''[C]laims under Title VII and the [Fair Housing Act] generally should receive similar treatment'').

defendant to show that no less discriminatory alternative to the challenged practice exists.[36] HUD's administrative law judges have, at times, placed this burden of proof concerning a less discriminatory alternative on the respondent and, at other times, on the charging party.[37]

Through this rulemaking and interpretative authority under the Act, HUD formalizes its longstanding view that discriminatory effects liability is available under the Act and establishes uniform standards for determining when a practice with a discriminatory effect violates the Fair Housing Act.

III. The November 16, 2011, Proposed Rule

On November 16, 2011, HUD published a proposed rule in the **Federal Register** (76 FR 70921) addressing the discriminatory effects theory of liability under the Act. Specifically, HUD proposed adding a new subpart G to 24 CFR part 100, which would formalize the longstanding position held by HUD and the federal courts that the Fair Housing Act may be violated by a housing practice that has a discriminatory effect, regardless of whether the practice was adopted for a discriminatory purpose, and would establish uniform standards for determining when such a practice violates the Act.

In the proposed rule, HUD defined a housing practice with a ''discriminatory effect'' as one that ''actually or predictably: (1) Results in a disparate impact on a group of persons on the basis of race, color, religion, sex, handicap, familial status, or national origin; or (2) Has the effect of creating, perpetuating, or increasing segregated housing patterns on the basis of race, color, religion, sex, handicap, familial status, or national origin.''

A housing practice with a discriminatory effect would still be lawful if supported by a ''legally sufficient justification.'' HUD proposed that a ''legally sufficient justification'' exists where the challenged housing practice: (1) Has a necessary and manifest relationship to one or more legitimate, nondiscriminatory interests of the respondent or defendant; and (2) those interests cannot be served by another practice that has a less discriminatory effect.

Consistent with its own past practice and that of many federal courts, HUD proposed a burden-shifting framework for determining whether liability exists under a discriminatory effects theory. Under the proposed burden-shifting approach, the charging party or plaintiff in an adjudication first bears the burden of proving that a challenged practice causes a discriminatory effect. If the charging party or plaintiff meets this burden, the burden of proof shifts to the respondent or defendant to prove that the challenged practice has a necessary and manifest relationship to one or more of its legitimate, nondiscriminatory interests. If the respondent or defendant satisfies this burden, the charging party or plaintiff may still establish liability by demonstrating that the legitimate, nondiscriminatory interest can be served by another practice that has a less discriminatory effect.

In the proposed rule, HUD explained that violations of various provisions of the Act may be established by proof of discriminatory effects, including 42 U.S.C. 3604(a), 3604(b), 3604(f)(1), 3604(f)(2), 3605, and 3606 (see 76 FR 70923 n.20), and that discriminatory effects liability applies to both public and private entities (see 76 FR 70924 n.40).

HUD also proposed to revise 24 CFR part 100 to add examples of practices that may violate the Act under the discriminatory effects theory.

IV. Changes Made at the Final Rule Stage

In response to public comment, a discussion of which is presented in the following section, and in further consideration of issues addressed at the proposed rule stage, HUD is making the following changes at this final rule stage:

A. Changes to Subpart G

The final rule makes several minor revisions to subpart G in the proposed rule for clarity. The final rule changes ''housing practice'' to ''practice'' throughout proposed subpart G to make clear that the standards set forth in subpart G are not limited to the practices addressed in subpart B, which is titled ''Discriminatory Housing Practices.'' The final rule replaces ''under this subpart'' with ''under the Fair Housing Act'' because subpart G outlines evidentiary standards for proving liability under the Fair Housing Act. The final rule also replaces the general phrase ''prohibited intent'' with the more specific ''discriminatory intent.''

The final rule slightly revises the definition of discriminatory effect found in proposed § 100.500(a), without changing its meaning, to condense the definition and make it more consistent with terminology used in case law. Proposed § 100.500(a) provided that ''[a] housing practice has a discriminatory effect where it actually or predictably: (1) Results in a disparate impact on a group of persons on the basis of race, color, religion, sex, handicap, familial status, or national origin; or (2) Has the effect of creating, perpetuating, or increasing segregated housing patterns on the basis of race, color, religion, sex, handicap, familial status, or national origin.'' Final § 100.500(a) provides that ''[a] practice has a discriminatory effect where it actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin.''

To clarify ''legally sufficient justification'' and in particular, what HUD meant in the proposed rule by ''a necessary and manifest relationship to one or more legitimate, nondiscriminatory interests,'' HUD is revising the definition found in proposed § 100.500(b) to read as follows: ''(1) A legally sufficient justification exists where the challenged practice:

(i) Is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent, with respect to claims brought under 42 U.S.C. 3612, or defendant, with respect to claims brought under 42 U.S.C. 3613 or 3614; and (ii) Those interests could not be served by another practice that has a less discriminatory effect. (2) A legally sufficient justification must be supported by evidence and may not be hypothetical or speculative * * *.'' This revision to the definition of ''legally sufficient justification'' includes changing ''cannot be served,'' the phrasing used in the proposed rule, to ''could not be served.''

This revised definition of ''legally sufficient justification'' also appears in § 100.500(c)(2) and, in essentially the same form, in § 100.500(c)(3). The final rule also replaces the word ''demonstrating'' with ''proving'' in § 100.500(c)(3) in order to make clear that the burden found in that section is one of proof, not production.

In addition to these changes, the final rule makes several minor corrections to § 100.500. The final rule substitutes ''42

[36] *Huntington Branch,* 844 F.2d at 939.

[37] *Compare, e.g., HUD* v. *Carter,* 1992 WL 406520, at *6 (HUD ALJ May 1, 1992) (respondent bears the burden of showing that no less discriminatory alternative exists), *and HUD* v. *Twinbrook Village Apts.,* 2001 WL 1632533, at *17 (HUD ALJ Nov. 9, 2001) (same), *with HUD* v. *Mountain Side Mobile Estates P'ship,* 1993 WL 367102, at *6 (charging party bears the burden of showing that a less discriminatory alternative exists), *and HUD* v. *Pfaff,* 1994 WL 592199, at *8 (HUD ALJ Oct. 27, 1994) (same).

U.S.C. 3610'' with ''42 U.S.C. 3612'' in § 100.500(c)(1) because the procedures for a formal adjudication under the Act are found in 42 U.S.C. 3612. Also in § 100.500(c)(1), the final rule changes ''proving that a challenged practice causes a discriminatory effect'' to ''proving that a challenged practice caused or predictably will cause a discriminatory effect.'' This edit is required for consistency with the Fair Housing Act and § 100.500(a), which prohibit actions that predictably result in discrimination.

The final rule further corrects proposed § 100.500(c)(1) and (2) to replace ''complainant'' with ''charging party'' because in cases tried before HUD administrative law judges, the charging party—and not the complainant—has the same burden of proof as a plaintiff in court. Under the provisions of the Act governing adjudication of administrative complaints, an aggrieved person may file a complaint with the Secretary alleging a discriminatory housing practice, or the Secretary may file such a complaint,[38] but it is the Secretary who issues the charge of discrimination and prosecutes the case before the Administrative Law Judge, on behalf of the aggrieved person.[39] Any aggrieved person may intervene as a party in the proceeding,[40] in which case the intervener would bear the same burden of proof as the charging party or a plaintiff in a judicial action.

B. Changes to Illustrations

The illustrations added in this rule, as well as the existing illustrations in part 100, represent HUD's interpretation of conduct that is illegal housing discrimination under the Fair Housing Act. Liability can be established for the conduct illustrated in part 100 through evidence of intentional discrimination, or based on discriminatory effects pursuant to the standards set forth in subpart G, depending on the nature of the potential violation.

In order to make clear that the Fair Housing Act violations illustrated in part 100 may be proven through evidence of intentional discrimination or discriminatory effects, as the evidence permits, and that any potential discriminatory effects violation must be assessed pursuant to the standards set forth in § 100.500, the final rule amends paragraph (b) of § 100.5 to add at the end the following sentence: ''The illustrations of unlawful housing discrimination in this part may be established by a practice's discriminatory effect, even if not motivated by discriminatory intent, consistent with the standards outlined in § 100.500.''

The final rule revises the illustrations of discriminatory housing practices in the proposed rule, rephrasing them in more general terms. The language of the added illustrations, which in the proposed rule included paraphrasing the definition of discriminatory effect from subpart G, is revised to eliminate the paraphrasing, which is unnecessary after the addition to paragraph (b) of § 100.5. This revision is also intended to eliminate any potential negative implication from the proposed rule that the existing illustrations in part 100 could not be proven through an effects theory. In addition to this general streamlining of the illustrations in the proposed rule, the final rule makes the following specific revisions to the illustrations.

In order to avoid redundancy in HUD's Fair Housing Act regulations, this final rule eliminates proposed § 100.65(b)(6). The substance of proposed § 100.65(b)(6), which covers ''Providing different, limited, or no governmental services such as water, sewer, or garbage collection'' is already captured by existing § 100.65(b)(4), which prohibits ''Limiting the use of privileges, services, or facilities associated with a dwelling,'' and existing § 100.70(d)(4), which prohibits ''Refusing to provide municipal services * * * for dwellings or providing such services differently.''

In response to public comment, the final rule adds ''enacting'' and ''ordinance'' to § 100.70(d)(5). These changes confirm that an ordinance is one type of land-use decision that is covered by the Act, under a theory of intentional discrimination or discriminatory effect, and that land-use decisions may discriminate from the moment of enactment. This final rule therefore revises proposed § 100.70(d)(5) to give the following as an illustration of a prohibited practice: ''Enacting or implementing land-use rules, ordinances, policies, or procedures that restrict or deny housing opportunities or otherwise make unavailable or deny dwellings to persons because of race, color, religion, sex, handicap, familial status, or national origin.'' The final rule removes ''cost'' and ''terms or conditions'' from proposed § 100.120(b)(2) and adds them to § 100.130. This revision is not intended to make any substantive changes to HUD's interpretation of the Act's coverage, but rather is for organizational purposes only: § 100.120 addresses discrimination in the making and provision of loans and other financial assistance, while § 100.130 addresses discriminatory terms or conditions. Other minor streamlining changes are made to existing § 100.120(b). Accordingly, this final rule revises § 100.120(b) to read as set forth in the regulatory text of the rule.

The final rule amends existing § 100.130(b)(2) to add ''or conditions'' and the term ''cost'' to the list of potentially discriminatory terms or conditions of loans or other financial assistance. It also adds new § 100.130(b)(3), which, in response to a public comment, illustrates that servicing is a condition of loans or other financial assistance covered by section 805.[41] Because, as noted above, at the final rule stage ''terms and conditions'' is removed from proposed § 100.120(b)(2), new § 100.130(b)(3) also addresses the provision of loans or other financial assistance with terms or conditions that have a discriminatory intent or effect. As a result of these changes, new § 100.130(b)(3) reads as follows: ''Servicing of loans or other financial assistance with respect to dwellings in a manner that discriminates, or servicing of loans or other financial assistance which are secured by residential real estate in a manner that discriminates, or providing such loans or financial assistance with other terms or conditions that discriminate, because of race, color, religion, sex, handicap, familial status, or national origin.''

V. The Public Comments

The public comment period for the November 16, 2011, proposed rule closed on January 17, 2012. Ninety-six public comments were received in response to the proposed rule. Comments were submitted by a wide variety of interested entities, including individuals, fair housing and legal aid organizations, state and local fair housing agencies, Attorneys General from several States, state housing finance agencies, public housing agencies, public housing trade associations, insurance companies, mortgage lenders, credit unions, banking trade associations, real estate agents, and law firms.[42] This section of the preamble, which addresses significant issues raised in the public

[38] 42 U.S.C. 3610(a)(1)(A).

[39] 42 U.S.C. 3610(g)(2)(A), 3612.

[40] 42 U.S.C. 3612(c).

[41] 42 U.S.C. 3605. Discrimination in residential mortgage servicing may also violate section 804 of the Act, 42 U.S.C. 3604.

[42] All public comments on this rule can be found at *www.regulations.gov,* specifically at *http://www.regulations.gov/#!searchResults;rpp=50;po=0;dktid=HUD-2011-0138.*

comments, organizes the comments by subject category, with a brief description of the issue (or set of related issues) followed by HUD's response.

Many comments were received in support of the rule generally and in support of the proposed discriminatory effects standard in particular. This summary does not provide a response to comments that expressed support for the proposed rule. Supportive comments included statements asserting that the rule: advances the goals of the Fair Housing Act; offers a well-reasoned standard for analyzing discriminatory effects claims; provides a national standard for courts, housing providers, municipalities and the financial and insurance industries; provides clarity to housing providers, housing seekers, and others; will decrease litigation by clarifying the burdens of proof; and will help address a lack of adequate housing for older persons even though age is not a protected characteristic under the Act because older persons may be affected by practices with a discriminatory effect based on disability. Commenters stated that the rule is particularly necessary to maintain protections against discriminatory and abusive practices in the mortgage industry, as the Fair Housing Act covers activities in residential real estate-related transactions that may not be covered by the Equal Credit Opportunity Act (ECOA).[43] A commenter stated that the rule's flexible standard is appropriate, as no rigid formula fits the variety of practices that exist in a rapidly evolving housing market.

Several commenters supported discriminatory effects liability under the Act in general, stating that it is widely agreed that discriminatory effects analysis is critically important to vigorous enforcement of the Fair Housing Act, and that the rule is consistent with HUD's longstanding interpretation and the interpretation of the federal courts of appeals. Commenters in support of the importance of the effects test proffered the following: if the effects approach were no longer available, ''the proverbial door to equal housing opportunity will be slammed in the face of many victims''; the effects analysis is particularly important with respect to the protection of persons with disabilities and in familial status cases; municipal land use decisions are more likely to have a discriminatory effect on minorities when they unreasonably attempt to restrict affordable housing; the effects analysis is important to environmental justice investigations; the discriminatory effects standard encourages housing providers to develop creative ways to achieve their economic objectives while promoting diversity; the effects standard gives HUD and fair housing advocates the tools to reveal the effects of racism, poverty, disability discrimination, and adverse environmental conditions on the health and well-being of individuals protected by the law; the rule provides practical administrative guidance for HUD attorneys and administrative law judges, as well as for the state and local fair housing agencies that share responsibility with HUD for adjudicating fair housing complaints; and the disparate impact standard is important in addressing discrimination in lending and denial of access to credit, which are often the results of neutral policies that have a disparate impact on protected groups.

Some commenters supported the proposed rule's allocation of the burden of proof, stating that the rule is practical and supported by longstanding precedent, and that it provides clear guidance to housing providers and government agencies in adopting rules and policies and an objective method for courts to evaluate discriminatory effect claims. A commenter stated that the perpetuation of segregation theory of effects liability is supported by the legislative history of Title VIII and the obligation to affirmatively further fair housing found in 42 U.S.C. 3608(d).

Following are the remaining issues raised by the public comments and HUD's responses.

A. Validity of Discriminatory Effects Liability Under the Act

Issue: Some commenters opposed the rule because, in their view, the Act's text cannot be interpreted to include liability under a discriminatory effects theory. Commenters stated that the Fair Housing Act does not include an effects standard because it does not use the phrase ''adversely affect,'' as in Title VII, the Age Discrimination in Employment Act (ADEA), or the Americans with Disabilities Act. One of these commenters stated that the Fair Housing Act does not include any of the words in other statutes that have been interpreted as giving rise to disparate impact claims, such as ''affect'' and ''tend to.'' A commenter found the ''otherwise make unavailable or deny'' language in the Fair Housing Act unpersuasive evidence that Congress intended the Act to include an effects test because it is a catchall phrase at the end of a list of prohibited conduct, and it must be read as having a similar meaning as the specific items on the list.

Some commenters stated that the Act's prohibition of certain practices ''because of,'' ''on account of,'' or ''based on'' a protected classification necessitates a showing of discriminatory intent. A commenter stated that ''because of'' and ''on account of,'' as used in every provision of the Act, require evidence of intent because the same phrases are used in two provisions of the Act that cannot plausibly be interpreted to employ discriminatory effects liability. In this regard, this commenter pointed to 42 U.S.C. 3631, which uses the phrase ''because of'' to create criminal liability for specific fair housing violations, and 42 U.S.C. 3617, which uses the phrase ''on account of'' to ban coercion and intimidation of those exercising fair-housing rights.

Other commenters expressed support for a rule setting out the discriminatory effects theory of liability. Some of these commenters stated that Congress intended that such liability exist and that the text of the Act readily supports this position. Commenters stated that discriminatory effects liability best effectuates Congress's broad, remedial intent in passing the Fair Housing Act and the Act's stated purpose of providing for fair housing, within constitutional limitations, throughout the country. Commenters pointed out, through examples of neutral practices with discriminatory results that they have encountered, that an effects theory of liability continues to be vital in achieving the Act's broad goal. Commenters stated that, consistent with HUD's interpretation of the Act, federal courts have unanimously held that liability may be established by proof of discriminatory effects.

HUD Response: As the preamble to the proposed rule and this final rule make clear, both HUD and the federal courts have long interpreted the Fair Housing Act to prohibit actions that have an unjustified discriminatory effect, regardless of whether the action was motivated by a discriminatory intent. Section 804(a) of the Act makes it unlawful ''[t]o refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex,

[43] ECOA prohibits any creditor from discriminating in credit transactions on the basis of race, color, national origin, religion, age, sex, marital status, or public assistance program participation. *See* 15 U.S.C. 1691(a). By comparison, Section 805 of the Fair Housing Act prohibits any person whose business includes engaging in residential-related transactions from discriminating in such transactions on the basis of race, color, religion, sex, disability, familial status, or national origin. *See* 42 U.S.C. 3605.

familial status, or national origin.'' [44] Similarly, section 804(f)(1) makes it unlawful ''[t]o discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap.'' [45] This ''otherwise make unavailable or deny'' formulation in the text of the Act focuses on the effects of a challenged action rather than the motivation of the actor. In this way, the provisions are similar to the ''otherwise adversely affect'' formulation that the Supreme Court found to support disparate impact liability under Title VII and the ADEA.[46] And, indeed, the federal courts have drawn the analogy between Title VII and the Fair Housing Act in interpreting the Act to prohibit actions that have an unjustified discriminatory effect, regardless of intent.[47]

In addition, many of the Fair Housing Act's provisions make it unlawful ''to discriminate'' in certain housing-related transactions based on a protected characteristic.[48] ''Discriminate'' is a term that may encompass actions that have a discriminatory effect but not a discriminatory intent.[49] HUD's extensive experience in administering the Fair Housing Act and in investigating and adjudicating claims arising under the Act, which is discussed in this preamble and that of the proposed rule,[50] informs its conclusion that not only can the term ''discriminate'' be interpreted to encompass discriminatory effects liability, but it must be so interpreted in order to achieve the Act's stated purpose to provide for fair housing to the extent the Constitution allows.[51] Indeed, as far back as 1980, the HUD Secretary explained to Congress why discriminatory effects liability under the Fair Housing Act is ''imperative to the success of civil rights enforcement.'' [52] Only by eliminating practices with an unnecessary disparate impact or that unnecessarily create, perpetuate, increase, or reinforce segregated housing patterns, can the Act's intended goal to advance equal housing opportunity and achieve integration be realized.[53] In keeping with the broad remedial goals of the Fair Housing Act,[54] HUD interprets the term ''discriminate,'' as well as the language in sections 804(a) and 804(f)(1) of the Act, to encompass liability based on the results of a practice, as well as any intended effect.

The ''because of'' phrase found in sections 804 and 805 of the Act [55] and similar language such as ''on account of'' or ''based on'' does not signal that Congress intended to limit the Act's coverage to intentional discrimination. Both section 703(a)(2) of Title VII [56] and section 4(a)(2) of the ADEA [57] prohibit certain actions ''because of'' a protected characteristic, yet neither provision requires a finding of discriminatory intent.[58] Moreover, the fact that the phrases ''on account of'' and ''because of'' appear in sections 817 and 831 of the Fair Housing Act [59] does not preclude finding discriminatory effects liability under the Act's other substantive provisions using the same language because, as discussed above, HUD bases its interpretation of those other provisions on other language not found in sections 817 and 831, such as the phrase ''otherwise make unavailable or deny a dwelling'' and the term ''discriminate.''

HUD's interpretation is confirmed by the fact that the Act's text contains three exemptions that presuppose that the Act encompasses an effects theory of liability. For one, section 805(c) of the Act allows ''a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, sex, handicap, or familial status.'' [60] If the Act prohibited only intentional discrimination, it would not be unlawful to ''take into consideration factors other than'' protected characteristics in the first instance, and this exemption would be superfluous. Second, section 807(b)(1) of the Act states that ''[n]othing in this title limits the applicability of any reasonable local, State, or Federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.'' [61] Since ''the number of occupants permitted to occupy a dwelling'' is not a protected classification under the Act, this provision makes sense only as authorizing occupancy limits that would otherwise violate the Act based on an effects theory.[62] Indeed, in 1991, HUD issued a memorandum to its staff explaining when occupancy limits would violate the Act based on disparate impact liability, and Congress later directed HUD to publish these guidelines in the **Federal Register**. [63] Third, section 807(b)(4) of the Act states that ''[n]othing in this title prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance.'' [64] As with the two exemptions discussed above, this provision would be wholly unnecessary if the Act prohibited only intentional discrimination.

[44] 42 U.S.C. 3604(a).

[45] 42 U.S.C. 3604(f)(1).

[46] *See Griggs* v. *Duke Power Co.,* 401 U.S. 424, 431 (1971) (holding that Title VII includes a disparate impact standard); *Smith* v. *City of Jackson, Miss.,* 544 U.S. 228, 235 (2005) (affirming that the holding in *Griggs* represented the best reading of Title VII's text); *id.* at 240 (holding that section 4(a)(2) of the ADEA includes a disparate impact standard); *see also Nat'l Cmty. Reinvestment Coalition* v. *Accredited Home Lenders Holding Co.,* 573 F. Supp. 2d 70, 78 (D.DC 2008) (holding that the Fair Housing Act encompasses disparate impact liability because, among other reasons, language in the Act is analogous to language in the ADEA found by the Supreme Court to include disparate impact).

[47] *See Resident Advisory Bd.* v. *Rizzo,* 564 F.2d 126, 146 (3d Cir. 1977) (''[I]n Title VIII cases, by analogy to Title VII cases, unrebutted proof of discriminatory effect alone may justify a federal equitable response.''); *Graoch,* 508 F.3d at 374 (quoting *Griggs,* 401 U.S. at 431) (''The Supreme Court held that Title VII, which uses similar language [to Title VIII], 'proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation.' The same analysis justifies the existence of disparate-impact liability under the FHA.'').

[48] *See* 42 U.S.C. 3604(b), 3604(f)(1), 3604(f)(2), 3605, and 3606.

[49] *See, e.g., Alexander* v. *Choate,* 469 U.S. 287, 299 (1985) (assuming without deciding that section 504 of the Rehabilitation Act of 1973, which prohibits ''subject[ing] to discrimination'' otherwise qualified handicapped individuals, ''reaches at least some conduct that has an unjustifiable disparate impact upon the handicapped''); *Board. of Ed.* v. *Harris,* 444 U.S. 130, 140–41 (1979) (concluding that the term ''discrimination,'' as used in the 1972 Emergency School Aid Act, was ambiguous and proscribed actions that had a disparate impact).

[50] *See supra* nn. 12–27; preamble to the November 16, 2011, proposed rule at 76 FR 70922–23.

[51] In enacting the Fair Housing Act, Congress expressed its desire to provide, within constitutional limitations, for fair housing throughout the United States. *See* 42 U.S.C. 3601.

[52] *See* 126 Cong. Rec. 31,166–31,167 (1980) (statement of Sen. Mathias) (reading into the record letter of HUD Secretary).

[53] *See supra* nn. 3–7; *infra* nn. 65–69.

[54] *See supra* note 11.

[55] 42 U.S.C. 3604 and 3605.

[56] 42 U.S.C. 2000e–2(a)(2).

[57] 29 U.S.C. 623(a)(2).

[58] *See Meacham* v. *Knolls Atomic Power Lab.,* 554 U.S. 84, 96 (2008) (explaining that, ''in the typical disparate-impact case'' under the ADEA, ''the employer's practice is 'without respect to age' and its adverse impact (though 'because of age') is 'attributable to a nonage factor' ''); *Resident Advisory Bd.* v. *Rizzo,* 564 F.2d 126, 147 (3d Cir. 1977) (''[T]he 'because of race' language is not unique to § 3604(a): that same language appears in Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e–2(h), yet a prima facie case of Title VII liability is made out when a showing of discriminatory effect (as distinct from intent) is established.'').

[59] 42 U.S.C. 3617 and 3631.

[60] 42 U.S.C. 3605(c).

[61] 42 U.S.C. 3607(b)(1).

[62] *See City of Jackson,* 544 U.S. at 238–39 (explaining that the ADEA's provision that allows an employer ''to take any action otherwise prohibited * * * where the differentiation is based on reasonable factors other than age discrimination'' would be ''simply unnecessary'' if the ADEA prohibited only intentional discrimination).

[63] *See supra* note 26.

[64] 42 U.S.C. 3607(b)(4).

The legislative history of the Act informs HUD's interpretation. The Fair Housing Act was enacted after a report by the National Advisory Commission on Civil Disorders, which President Johnson had convened in response to major riots taking place throughout the country, warned that ''[o]ur Nation is moving toward two societies, one black, one white—separate and unequal.'' [65] The Act's lead sponsor, Senator Walter Mondale, explained in the Senate debates that the broad purpose of the Act was to replace segregated neighborhoods with ''truly integrated and balanced living patterns.'' [66] Senator Mondale recognized that segregation was caused not only by ''overt racial discrimination'' but also by ''[o]ld habits'' which became ''frozen rules,'' [67] and he pointed to one such facially neutral practice—the ''refusal by suburbs and other communities to accept low-income housing.'' [68] He further explained some of the ways in which federal, state, and local policies had formerly operated to require segregation and argued that ''Congress should now pass a fair housing act to undo the effects of these past'' discriminatory actions.[69]

Moreover, in the approximately 20 years between the Act's enactment in 1968 and its amendment in 1988, the nine federal courts of appeals to address the issue held that the Act prohibited actions with a discriminatory effect.[70] Congress was aware of this widespread judicial agreement when it significantly amended the Act in 1988.[71] At that time, the House Committee on the Judiciary specifically rejected an amendment that would have provided that ''a zoning decision is not a violation of the Fair Housing Act unless the decision was made with the intent to discriminate.'' [72] Instead of adding this intent requirement to the Act, Congress chose to maintain the Act's operative text barring discrimination and making unavailable or denying housing, to extend those prohibitions to disability and familial status, and to establish the exemptions discussed above that presuppose the availability of a discriminatory effects theory of liability.[73] The failed attempt in 1988 to impose an intent requirement on the Act followed five other failed attempts, in 1980,[74] 1981,[75] 1983,[76] 1985,[77] and 1987.[78]

Issue: Two commenters stated that, when promulgating regulations implementing the Fair Housing Amendments Act of 1988, HUD stated in the preamble that the ''regulations are not designed to resolve the question of whether intent is or is not required to show a violation'' of the Act.[79] A commenter faulted HUD for failing to explain what the commenter perceived as a change in its official interpretation of the Act, and urged HUD to eliminate disparate impact liability from the rule. Some commenters stated that President Reagan, when signing the Fair Housing Amendments Act of 1988, expressed his opinion that the amendment ''does not represent any congressional or executive branch endorsement of the notion, expressed in some judicial opinions, that [Fair Housing Act] violations may be established by a showing of disparate impact or discriminatory effects of a practice that is taken without discriminatory intent.'' [80] Some commenters also stated that, in 1988, the United States Solicitor General submitted an amicus brief to the U.S. Supreme Court in *Huntington Branch, NAACP* v. *Town of Huntington* asserting that a violation of the Fair Housing Act requires a finding of intentional discrimination.[81]

HUD Response: While HUD chose not to use the regulations implementing the Fair Housing Amendments Act of 1988 to opine formally on whether a violation under the Act may be established absent discriminatory intent, it has never taken the position that the Act requires a finding of intentional discrimination. On the contrary, through formal adjudications and various other means, including other regulations, interpretive guidance, and statements to Congress, HUD has consistently construed the Act as encompassing discriminatory effects liability.[82] HUD's prior interpretations of the Act regarding the discriminatory effects standard are entitled to judicial deference.[83] Neither President Reagan's signing statement nor the Solicitor General's amicus brief in *Huntington Branch* affects or overrides the longstanding, consistent construction of the Act by HUD, the agency with delegated authority to administer the Act and to promulgate rules interpreting it. Moreover, the Department of Justice both before and after *Huntington Branch* has taken the position that the Fair Housing Act includes discriminatory effects liability.[84]

B. Definition of Discriminatory Effect, § 100.500(a)

In order to make it more concise and more consistent with terminology used in case law without changing its substance, this final rule slightly revises the definition of ''discriminatory effect.''

Proposed § 100.500(a) provided that ''A housing practice has a discriminatory effect where it actually or predictably: (1) Results in a disparate impact on a group of persons on the basis of race, color, religion, sex, handicap, familial status, or national origin; or (2) Has the effect of creating, perpetuating, or increasing segregated housing patterns on the basis of race, color, religion, sex, handicap, familial status, or national origin.''

Final § 100.500(a) provides that ''[a] practice has a discriminatory effect where it actually or predictably results in a disparate impact on a group of

[65] Report of the National Advisory Commission on Civil Disorders 1 (1968).

[66] 90 Cong. Rec. 3422 (1968).

[67] 114 Cong. Rec. 3421 (1968).

[68] *Id.* at 2277.

[69] *Id.* at 2669.

[70] *See, e.g., Huntington Branch, NAACP* v. *Town of Huntington,* 844 F.2d 926, 935–36 (2d Cir.), aff'd, 488 U.S. 15 (1988); *Hanson* v. *Veterans Admin.,* 800 F.2d 1381, 1386 (5th Cir. 1986); *Arthur* v. *City of Toledo,* 782 F.2d 565, 574–75 (6th Cir. 1986); *United States* v. *Marengo Cnty. Comm'n,* 731 F.2d 1546, 1559 n.20 (11th Cir. 1984); *Smith* v. *Clarkton,* 682 F.2d 1055, 1065 (4th Cir. 1982); *Halet* v. *Wend Inv. Co.,* 672 F.2d 1305, 1311 (9th Cir. 1982); *Resident Advisory Bd.* v. *Rizzo,* 564 F.2d 126, 146 (3d Cir. 1977); *Metro. Hous. Dev. Corp.* v. *Vill. of Arlington Heights,* 558 F.2d 1283, 1290 (7th Cir. 1977), cert. denied, 434 U.S. 1025 (1978); *United States* v. *City of Black Jack,* 508 F.2d 1179, 1184–85 (8th Cir. 1974).

[71] *See, e.g.,* H.R. Rep. No. 100–711, at 2182 (1988) (citing courts of appeals decisions in discussing a policy that could have a ''discriminatory effect'' on minority households ''[b]ecause minority households tend to be larger''); 134 Cong. Rec. 23711–12 (1988) (Statement of Sen. Kennedy) (noting unanimity of courts of appeals as to the disparate impact test); Fair Housing Amendments Act of 1987: Hearings Before the Subcomm. on the Constitution of the S. Comm. on the Judiciary, 100th Cong., 1st Sess. 529–557 (1987) (testimony of Prof. Robert Schwemm, Univ. of Ky. Law Sch.) (discussing ''strong consensus'' in federal courts of appeals that the Fair Housing Act prohibited disparate impact discrimination).

[72] *See* H.R. Rep. No. 100–711, at 89–91 (1988) (dissenting views of Rep. Swindall).

[73] *See* Fair Housing Amendments Act of 1988, Pub. L. 100–430, 102 Stat. 1619 (1988).

[74] H.R. Rep. No. 96–865, at 2 (1980) (The Act ''effectively proscribed housing practices with the intent or effect of discriminating on account of race, color, national origin, or religion.''); 126 Cong. Rec. 31,164 (1980) (explaining that the addition of an intent requirement ''would make a radical change in the standard of proof in title VIII cases'') (statement of Sen. Bayh).

[75] 127 Cong. Rec. 22,156 (1981).

[76] 129 Cong. Rec. 808 (1983).

[77] S. 139, 99th Cong. § 6(e) (1985).

[78] 133 Cong. Rec. 7180 (1987).

[79] 54 FR 3232, 3235 (Jan. 23, 1989).

[80] Remarks on Signing the Fair Housing Amendments Act of 1988, 24 Weekly Comp. Pres. Doc. 1140, 1141 (Sept. 13, 1988).

[81] *See* Brief for United States as Amicus Curiae, *Town of Huntington* v. *Huntington Branch, NAACP,* 488 U.S. 15 (1988) (No. 97–1961).

[82] *See, e.g.,* nn. 12–27, *supra.*

[83] *See, e.g., United States* v. *Mead Corp.,* 533 U.S. 218, 230 & n.12 (2001) (*Chevron* deference is warranted for formal adjudications).

[84] *See United States.* v. *City of Black Jack,* 508 F.2d 1179, 1184–86 (8th Cir. 1974); *see also* Brief for the United States as Amicus Curiae, *Magner* v. *Gallagher,* 132 S. Ct. 1306 (2012) (No. 10–1032).

persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin.''

Commenters raised a number of issues with respect to the definition of ''discriminatory effect.''

Issue: Two commenters requested that HUD expand the definition of ''housing practice'' to include the language from the preamble to the proposed rule that provided examples of facially neutral actions that may result in a discriminatory effect, ''e.g. laws, rules, decisions, standards, policies, practices, or procedures, including those that allow for discretion or the use of subjective criteria,'' to make clear that the Act does not apply only to housing ''practices.''

HUD Response: The Act and HUD regulations define ''discriminatory housing practice'' broadly as ''an act that is unlawful under section 804, 805, 806, or 818.'' [85] As HUD explained in the preamble to the proposed rule, any facially neutral actions, e.g., laws, rules, decisions, standards, policies, practices, or procedures, including those that allow for discretion or the use of subjective criteria, may result in a discriminatory effect actionable under the Fair Housing Act. Given the breadth of the definition of ''discriminatory housing practice,'' and the examples provided in the preamble to the proposed rule, HUD does not agree that it is necessary to provide those examples in the text of the regulation. The final rule does, however, replace ''housing practice'' with ''practice'' in order to make clear it applies to the full range of actions that may violate the Fair Housing Act under an effects theory.

Issue: A commenter stated that, in light of the Supreme Court's decision in *Wal-Mart Stores, Inc.* v. *Dukes,*[86] HUD should ''remove those aspects of the proposed rule that would give rise to disparate impact liability based on the exercise of discretion.''

HUD Response: HUD does not agree that the Supreme Court's decision in *Wal-Mart* means that policies permitting discretion may not give rise to discriminatory effects liability under the Fair Housing Act. The opinion in *Wal-Mart* did not address the substantive standards under the Fair Housing Act but instead addressed the issue of class certification under Title VII. Moreover, even in that context, the opinion in *Wal-Mart* does not shield policies that allow for discretion from liability under Title VII. On the contrary, the Supreme Court confirmed that an employer who permits his managers to exercise discretion may be liable under Title VII pursuant to a disparate impact theory, ''since an employer's undisciplined system of subjective decision-making can have precisely the same effects as a system pervaded by impermissible intentional discrimination.'' [87]

Issue: Some commenters asked HUD to remove the word ''predictably'' from the proposed definition. One commenter made this request out of concern that such a definition would make good faith compliance with the Act difficult, and another because claims based on a predictable impact are too speculative. Another commenter expressed support for the inclusion of ''predictably'' in the definition because discrimination cases often involve members of a protected class who predictably would be impacted by the challenged practice. As an example, the commenter stated that a challenge to a zoning or land use ordinance might focus on persons who would be excluded from residency by application of the ordinance.

HUD Response: HUD agrees with the latter commenter that the Act is best interpreted as prohibiting actions that predictably result in an unjustified discriminatory effect. HUD's interpretation is supported by the plain language of the Fair Housing Act, which defines ''aggrieved person'' as any person who ''believes that such person will be injured by a discriminatory housing practice that is about to occur,'' [88] and which specifically authorizes HUD to take enforcement action and ALJs and courts to order relief with respect to discrimination that ''is about to occur.'' [89] Moreover, courts interpreting the Fair Housing Act have agreed that predictable discriminatory effects may violate the Act.[90]

Issue: A commenter requested that the preamble or the text of the final rule make clear that reasonable data, such as data from the U.S. Census Bureau, data required by the Home Mortgage Disclosure Act (HMDA), and HUD data on the occupancy of subsidized housing units, can be used to demonstrate that a practice predictably results in a discriminatory effect.

HUD Response: The purpose of the rule, as identified in the November 16, 2011, proposed rule, is to formalize a long-recognized legal interpretation and establish a uniform legal standard, rather than to describe how data and statistics may be used in the application of the standard. The appropriate use of such data is discussed in other federal sources, including the Joint Policy Statement.

Issue: Several commenters expressed concern that the proposed rule did not explain the degree to which a practice must disproportionately impact one group over another. A few commenters expressed the opinion that, in order for a practice to violate the Act, the practice must result in a significant or non-trivial discriminatory effect. A commenter wrote that members of a protected class must be impacted in a manner that is ''meaningfully different'' from any impact on other individuals. Another commenter suggested defining a disparate impact as a 20 percent difference between the relevant groups. Another stated that the impact should be ''qualitatively different.'' A commenter wrote that, in the lending context, a disparate impact should not exist where statistics only show that a protected class, on an aggregate basis, has not received as many loans as the general population. Another commenter stated concern that the rule would allow small statistical differences in the pricing of loans to be actionable.

HUD Response: As stated in the response to the preceding issue, this rule concerns the formalization of a long-recognized legal interpretation and burden-shifting framework, rather than a codification of how data and statistics may be used in the application of the standard. To establish a prima facie case of discriminatory effects liability under the rule, the charging party or plaintiff must show that members of a protected class are disproportionately burdened by the challenged action, or that the practice has a segregative effect. Whether a particular practice results in a discriminatory effect is a fact-specific inquiry. Given the numerous and varied practices and wide variety of private and governmental entities covered by the Act, it would be impossible to specify in the rule the showing that would be required to demonstrate a discriminatory effect in each of these contexts. HUD's decision not to codify a significance requirement for pleading purposes is consistent with the Joint

[85] 42 U.S.C. 3602(f); 24 CFR 100.20.

[86] 131 S. Ct. 2541 (2011).

[87] Id. at 2554 (internal brackets and quotation omitted).

[88] 42 U.S.C. 3602(i).

[89] *See* 42 U.S.C. 3610(g)(2)(A); 3612(g)(3); 3613(c)(1); 3614(d)(1)(A).

[90] *See, e.g., Pfaff* v. *HUD,* 88 F.3d at 745 (''`Discriminatory effect' describes conduct that actually or predictably resulted in discrimination.''); *United States.* v. *City of Black Jack,* 508 F.2d at 1184 (''To establish a prima facie case of racial discrimination, the plaintiff need prove no more than that the conduct of the defendant actually or predictably results in racial discrimination; in other words, that it has a discriminatory effect.'').

Policy Statement,[91] the statutory codification of the disparate impact standard under Title VII,[92] and the Consumer Financial Protection Bureau's interpretation of the disparate impact standard under ECOA.[93]

Issue: Two commenters stated that, in order to establish a prima facie case of discriminatory effect liability, a charging party or plaintiff should have to identify a specific practice and show that the alleged discriminatory effect is caused by that specific practice, with a commenter referring to *Wards Cove Packing Co.* v. *Atonio,* 490 U.S. 642 (1989), in support of this position.

HUD Response: HUD addressed this issue at the proposed rule stage, and its analysis is not changed in this final rule. Under this rule, the charging party or plaintiff has the burden of proving that a challenged practice causes a discriminatory effect.[94] In HUD's experience, identifying the specific practice that caused the alleged discriminatory effect will depend on the facts of a particular situation and therefore must be determined on a case-by-case basis. Moreover, as recognized in the employment context under Title VII, the elements of a decision-making process may not be capable of separation for analysis,[95] in which case it may be appropriate to challenge the decision-making process as a whole. For example, in a reverse redlining case, there may be multiple acts or policies which together result in a discriminatory effect.[96]

Issue: Commenters expressed concern with the definition of ''discriminatory effect'' because it included a practice that has ''the effect of creating, perpetuating, or increasing segregated housing patterns'' based on protected class. A commenter asked that ''segregation'' be removed from the proposed definition. Another commenter expressed concern that this portion of the definition would extend liability beyond the factual circumstances of the cases HUD cited as examples in the proposed rule's preamble because, according to the commenter, most of those cases raised at least a suggestion of intentional discrimination. A commenter stated that ''perpetuating'' should be more clearly defined so that the rule states, for example, whether the term requires an attempt to segregate further, or merely a practice that continues existing patterns of segregation. Another commenter expressed the related opinion that ''not explicitly fostering integration'' should never form the basis for liability under the Act.

HUD Response: As discussed in the preambles to both the proposed rule and this final rule, the elimination of segregation is central to why the Fair Housing Act was enacted.[97] HUD therefore declines to remove from the rule's definition of ''discriminatory effects'' ''creating, perpetuating, or increasing segregated housing patterns.'' [98] The Fair Housing Act was enacted to replace segregated neighborhoods with ''truly integrated and balanced living patterns.'' [99] It was structured to address discriminatory housing practices that affect ''the whole community'' as well as particular segments of the community,[100] with the goal of advancing equal opportunity in housing and also to ''achieve racial integration for the benefit of all people in the United States.'' [101] Accordingly, the Act prohibits two kinds of unjustified discriminatory effects: (1) harm to a particular group of persons by a disparate impact; and (2) harm to the community generally by creating, increasing, reinforcing, or perpetuating segregated housing patterns.[102] Recognizing liability for actions that impermissibly create, increase, reinforce, or perpetuate segregated housing patterns directly addresses the purpose of the Act to replace segregated neighborhoods with ''truly integrated and balanced living patterns.'' For example, the perpetuation of segregation theory of liability has been utilized by private developers and others to challenge practices that frustrated affordable housing development in nearly all-white communities and thus has aided attempts to promote integration.[103]

Moreover, every federal court of appeals to have addressed the issue has agreed with HUD's interpretation that the Act prohibits practices with the unjustified effect of perpetuating segregation.[104] In one such case, for example, the court of appeals held that a zoning ordinance that prevents the construction of multifamily housing in areas that are primarily white may violate the Act by ''reinforcing racial

[91] *See* Joint Policy Statement, 59 FR 18,266, 18,269 (Apr. 15, 1994) (defining ''disparate impact'' as ''a disproportionate adverse impact'' on applicants from a protected group).

[92] *See* 42 U.S.C. 2000e-2(k)(1)(A)(i) (complaining party must demonstrate ''that a respondent uses a particular employment practice that causes a disparate impact'').

[93] *See* 12 CFR part 1002, Supp. I, Official Staff Commentary, Comment 6(a)-2 (discriminatory effect may exist when a creditor practice ''has a disproportionately negative impact on a prohibited basis'').

[94] *See* 24 CFR 100.500(c); *see also* 76 FR 70925.

[95] *See* 42 U.S.C. 2000e–2(k)(1)(B)(i) (''[T]he complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice'').

[96] *See, e.g., Hargraves* v. *Capital City Mortg. Corp,* 140 F. Supp. 2d 7, 20–22 (D.D.C. 2000) (finding that ''predatory lending'' in African American neighborhoods, which included exorbitant interest rates, lending based on the value of the asset rather than a borrower's ability to repay, profiting by acquiring the property through default, repeated foreclosures, and loan servicing procedures with excessive fees, could disparately impact African Americans).

[97] *See* nn. 6–7, 65–69 and accompanying text, *supra;* 76 FR 70922.

[98] As discussed in the ''Definition of Discriminatory Effect'' section, the final rule amends the definition of ''discriminatory effect'' to make it more concise and more consistent with terminology used in case law, but its substance is unchanged.

[99] *Trafficante,* 409 U.S. at 211 (citing 114 Cong. Rec. 3422 (Feb. 20, 1968) (statement of Senator Mondale)).

[100] *Trafficante,* 409 U.S. at 211 (citing 114 Cong. Rec. 2706 (1968) (Statement of Senator Javits)).

[101] H.R. Res. 1095, 110th Cong., 154 Cong. Rec. H2280–01 (April 15, 2008).

[102] *See, e.g., Graoch,* 508 F.3d at 378 (there are ''two types of discriminatory effects which a facially neutral housing decision can have: The first occurs when that decision has a greater adverse impact on one racial group than on another. The second is the effect which the decision has on the community involved; if it perpetuates segregation and thereby prevents interracial association it will be considered invidious under the Fair Housing Act independently of the extent to which it produces a disparate effect on different racial groups.''); *Huntington Branch,* 844 F.2d at 937 (''the discriminatory effect of a rule arises in two contexts: adverse impact on a particular minority group and harm to the community generally by the perpetuation of segregation * * * recognizing this second form of effect advances the principal purpose of Title VIII to promote, open, integrated residential housing patterns.'') (internal citations and quotation marks omitted); *Metro. Housing Dev. Corp.* v. *Village of Arlington Heights,* 558 F.2d at 1290 (''There are two kinds of racially discriminatory effects which a facially neutral decision about housing can produce. The first occurs when that decision has a greater adverse impact on one racial group than on another. The second is the effect which the decision has on the community involved; if it perpetuates segregation and thereby prevents interracial association it will be considered invidious under the Fair Housing Act independently of the extent to which it produces a disparate effect on different racial groups.'') (internal citations omitted); *Hallmark Developers, Inc.* v. *Fulton County,* 386 F. Supp. 2d 1369, 1383 (N.D. Ga. 2005) (''Of course there are two kinds of racially discriminatory effect which can be produced by a facially neutral decision. If the decision or action perpetuates segregation and thereby prevents interracial association it will be considered invidious under the Fair Housing Act independently of the extent to which it produces a disparate effect on different racial groups.'') (internal citations omitted).

[103] *See, e.g., Huntington Branch,* 844 F.2d at 937; *Arlington Heights,* 558 F.2d at 1291; *Black Jack,* 508 F.2d at 1184–86; *Summerchase Ltd. Pshp. I, et al.* v. *City of Gonzales, et al.,* 970 F. Supp. 522, 527–28 (M.D. La. 1997); *Dews,* 109 F. Supp. 2d at 567–68.

[104] *See supra* note 28.

segregation in housing.'' [105] For consistency with the terminology used in this case law, the final rule adds the term ''reinforces'' to the definition of ''discriminatory effect.''

In response to the comment regarding the facts of the cases HUD cited as examples in the proposed rule's preamble, HUD notes that those cases [106] are not exhaustive and therefore should not be viewed as the only ways that a violation of the Act may be established based on a discriminatory effects theory. Moreover, even if the facts of a particular case suggest intentional discrimination, in many instances both an intent to discriminate and a discriminatory effect may exist, and a charging party or plaintiff may bring a claim alleging either or both intent and effect as alternative theories of liability. Regardless, as explained throughout this preamble, and in case law, discriminatory intent is not required for a violation of the Act under an effects theory.

C. Legally Sufficient Justification, § 100.500(b)(1)

In response to comments, this final rule slightly revises the first prong of ''legally sufficient justification,'' as provided in the November 16, 2011, proposed rule, which is required to sustain a practice with a discriminatory effect under the Act.

Proposed § 100.500(b)(1) provided: ''A legally sufficient justification exists where the challenged housing practice: (1) Has a necessary and manifest relationship to one or more legitimate, nondiscriminatory interests of the respondent * * * or defendant.''

Final § 100.500(b)(1) provides: ''A legally sufficient justification exists where the challenged practice: (1) Is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent * * * or defendant * * * A legally sufficient justification must be supported by evidence and may not be hypothetical or speculative.''

Comments were received with respect to proposed § 100.500(b)(1), some agreeing with the standard as stated; some recommending that § 100.500(b)(1) set either a higher or lower standard of proof for defendants and respondents; and some suggesting that HUD provide definitions for certain terms or use slightly different terms to make the regulatory provision easier to understand and apply.

1. Substantial, Legitimate, Nondiscriminatory Interests, § 100.500(b)(1)

Issue: Although some commenters supported the use of the phrase ''legitimate, nondiscriminatory interest,'' a commenter asked that the final rule provide a definition of the phrase to ensure that the standard is applied uniformly. Commenters stated that the word ''substantial'' or ''clearly'' should modify the phrase ''nondiscriminatory interests,'' reasoning that justifying discrimination with an interest that may be of little or no importance to the defendant or respondent would run contrary to Congress's goal of providing for fair housing within constitutional limitations.

HUD Response: HUD agrees that, in order to effectuate the Fair Housing Act's broad, remedial goal, practices with discriminatory effects cannot be justified based on interests of an insubstantial nature. Accordingly, HUD is making clear in this final rule that any interest justifying a practice with a discriminatory effect must be ''substantial.'' A ''substantial'' interest is a core interest of the organization that has a direct relationship to the function of that organization. The requirement that an entity's interest be substantial is analogous to the Title VII requirement that an employer's interest in an employment practice with a disparate impact be job related.[107] HUD uses the more general standard of substantiality because there is no single objective, such as job-relatedness, against which every practice covered by the Fair Housing Act could be measured. The determination of whether goals, objectives, and activities are of substantial interest to a respondent or defendant such that they can justify actions with a discriminatory effect requires a case-specific, fact-based inquiry.

The word ''legitimate,'' used in its ordinary meaning, is intended to ensure that a justification is genuine and not false,[108] while the word ''nondiscriminatory'' is intended to ensure that the justification for a challenged practice does not itself discriminate based on a protected characteristic. HUD and federal courts interpreting the Fair Housing Act have been applying these concepts without incident.[109]

Issue: Commenters requested that ''legitimate, nondiscriminatory interests'' be replaced or equated with ''business necessity.'' This would, in their view, be consistent with judicial interpretations of the Fair Housing Act, with HUD's regulations governing Fannie Mae and Freddie Mac, and with the Joint Policy Statement. Commenters stated that the Joint Policy Statement is well established and provides a clear, predictable standard to covered entities. Several commenters expressed concern that the proposed standard requiring a ''legitimate'' justification was weaker than, and would be interpreted as requiring less than, the ''business necessity'' standard.

HUD Response: In its adjudications under the Fair Housing Act, HUD has required respondents to prove that their challenged practices are justified by business necessity.[110] The other federal regulatory and enforcement agencies involved in the investigation of lending discrimination have taken the same approach.[111] The ''substantial, legitimate, nondiscriminatory interest'' standard found in § 100.500(b)(1) is equivalent to the ''business necessity'' standard found in the Joint Policy Statement. The standard set forth in this rule is not to be interpreted as a more lenient standard than ''business necessity.'' HUD chooses not to use the phrase ''business necessity'' in the rule because the phrase may not be easily understood to cover the full scope of practices covered by the Fair Housing Act, which applies to individuals, businesses, nonprofit organizations, and public entities. Using the phrase ''business necessity'' might confuse litigating parties and the courts as to how the term might apply, for example, to a nonprofit organization that provides housing or housing-related services, or to a branch of state or local government carrying out its functions. The standards in § 100.500 apply equally to individuals, public entities, and for-

[105] *Huntington Branch,* 844 F.2d at 937–38.

[106] *See* 76 FR 70925.

[107] *See* 42 U.S.C. 2000e-2(k)(1)(A)(i).

[108] *See, e.g.,* Legitimate Definition, Merriam-Webster's Dictionary, *http://www.merriam-webster.com/dictionary/necessary* (last visited Mar. 15, 2012) (defining ''legitimate'' as ''neither spurious nor false'').

[109] *See, e.g., Darst-Webbe Tenant Ass'n Bd.* v. *St. Louis Hous. Auth.,* 417 F.3d 898, 902 (8th Cir. 2005) (defendant must prove that challenged action is necessary to achieve ''legitimate, non-discriminatory policy objectives''); *Charleston Hous. Auth.* v. *U.S. Dept. of Agric.* 419 F.3d 729 (same).

[110] *See, e.g.,* 1998 Enforcement Handbook at 2–30 (instructing HUD investigators that a respondent's policy must be justified by a ''business necessity''); *HUD* v. *Carlson,* 1995 WL 365009, at *14 (HUD ALJ June 12, 1995) (''The Respondent has the burden to overcome the prima facie case by establishing a business necessity for the policy.''); Joint Policy Statement, 59 FR at 18269 (requiring a challenged policy or practice to be ''justified by 'business necessity' '').

[111] *See* Joint Policy Statement, 59 FR at 18269.

profit and nonprofit private entities because, as discussed below, neither the text of the Act nor its legislative history supports drawing a distinction among them. Accordingly, HUD has chosen terminology that, while equivalent to its previous guidance in the Joint Policy Statement, applies readily to all covered entities and all covered activities.

Issue: Some commenters expressed concern that the term ''legitimate'' allows for subjective review of a proffered justification.

HUD Response: HUD and courts have reviewed justifications proffered by covered entities for many years. While the review is very fact intensive, it is not subjective. Whether an interest is ''legitimate'' is judged on the basis of objective facts establishing that the proffered justification is genuine, and not fabricated or pretextual.[112] HUD and courts have engaged in this inquiry for decades without encountering issues related to the subjectivity of the inquiry. HUD therefore believes that concerns about subjective reviews of proffered justifications are not warranted.

Issue: A commenter requested that the final rule expressly state that increasing profits, minimizing costs, and increasing market share qualify as legitimate, nondiscriminatory interests. Similarly, another commenter asked that the final rule codify examples of tenant screening criteria such as rental history, credit checks, income verification, and court records that would be presumed to qualify as legally sufficient justifications.

HUD Response: HUD is not adopting these suggestions because the Fair Housing Act covers many different types of entities and practices, and a determination of what qualifies as a substantial, legitimate, nondiscriminatory interest for a given entity is fact-specific and must be determined on a case-by-case basis. Accordingly, the final rule does not provide examples of interests that would always qualify as substantial, legitimate, nondiscriminatory interests for every respondent or defendant in any context.

2. Relationship Between Challenged Practice and Asserted Interest, § 100.500(b)(1)

Issue: Several commenters expressed concern with HUD's use of the term ''manifest'' in the proposed requirement that the challenged practice have a ''necessary and manifest relationship'' to one or more legitimate, nondiscriminatory interests of the respondent or defendant. Commenters expressed uncertainty about what the term was intended to mean and how it would be interpreted by HUD or by federal courts. Two commenters expressed concern that the term ''manifest'' may involve a subjective evaluation and others did not understand the evidentiary concept embodied in the term. A commenter urged HUD to make clear in the language of the final rule, in addition to the preamble, that a justification may not be hypothetical or speculative.

HUD Response: In the proposed rule, the term ''manifest'' was used to convey defendants' and respondents' obligation to provide evidence of the actual need for the challenged practices, instead of relying on speculation, hypothesis, generalization, stereotype, or fear. HUD recognizes that some commenters were confused by the term ''manifest.'' In response to these concerns, HUD is replacing the term ''manifest'' in the final rule with the requirement, added in § 100.500(b)(2), that ''a legally sufficient justification must be supported by evidence and may not be hypothetical or speculative.'' This language is intended to convey that defendants and respondents, relying on a defense under § 100.500(b)(1), must be able to prove with evidence the substantial, legitimate, nondiscriminatory interest supporting the challenged practice and the necessity of the challenged practice to achieve that interest. This language is consistent with HUD's longstanding application of effects liability under the Fair Housing Act, is easy to understand, can be uniformly applied by federal and state courts and administrative agencies, and is unlikely to cause confusion or unnecessary litigation about its meaning. HUD notes that this language is also consistent with the application of the standard by other federal regulatory and enforcement agencies under both the Fair Housing Act and ECOA,[113] with the approach taken under Title VII,[114] and with the approach taken by a number of federal courts interpreting the Fair Housing Act.[115]

Issue: A commenter suggested that the phrase ''necessary and manifest'' should be defined.

HUD Response: As discussed above, HUD has removed the word ''manifest'' in the final rule in order to avoid any potential confusion. Thus, § 100.500(b)(1) is slightly revised at this final rule stage to state that a respondent or defendant seeking to defend a challenged practice with a discriminatory effect must prove that the practice ''is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests'' of the respondent or defendant. In the proposed rule, as well as this final rule, HUD uses ''necessary'' in its ordinary, most commonly used sense.

Issue: Some commenters suggested that HUD remove the word ''necessary'' to make the standard found in § 100.500(b)(1) consistent with the Title VII standard set out in the Supreme Court's opinion in *Wards Cove Packing Co.* v. *Atonio,* 490 U.S. 642 (1989). Commenters suggested various standards without the word ''necessary,'' including requiring that the challenged practice have ''a legitimate business purpose,'' that the challenged practice have ''a legitimate nondiscriminatory purpose,'' or that the challenged practice be ''rationally related to a legitimate, nondiscriminatory goal.''

HUD Response: HUD declines to adopt the commenters' suggestion to remove ''necessary'' from the rule. HUD's substantial experience in administering the Fair Housing Act confirms that requiring a challenged practice with a discriminatory effect to be necessary best effectuates the broad, remedial goal of the Act. Indeed, in 1994 HUD and ten other federal agencies notified lenders of the requirement to justify the discriminatory effect of a challenged lending practice under the Fair Housing Act and ECOA by showing that the practice is necessary to their business.[116] Moreover, in 1997, HUD

[112] *See* note 109, *supra.*

[113] *See* Joint Policy Statement, 59 FR at 18269 (''The justification must be manifest and may not be hypothetical or speculative.'')

[114] *See* 42 U.S.C. 2000e–2(k)(1)(A)(i) (the respondent must ''*demonstrate* that the challenged practice is job related for the position in question and consistent with business necessity'') (emphasis added).

[115] *See, e.g., Charleston Hous. Auth.* v. *U.S. Dep't of Agric.,* 419 F.3d 729, 741 (8th Cir. 2005) (the challenged housing practice must have a ''manifest relationship'' to the defendant's objectives); *Resident Advisory Bd.* v. *Rizzo,* 564 F.2d at 149 (''a justification must serve, in theory and practice, a legitimate, bona fide interest of the Title VIII defendant'') (emphasis added); *Huntington Branch, NAACP* v. *Town of Huntington,* 844 F.2d at 938, aff'd, 488 U.S. 15 (1988) (per curiam) (same).

[116] *See* Joint Policy Statement, 59 FR 18,269 (the second step of a disparate impact analysis under the Fair Housing Act and ECOA is to ''determine whether the policy or practice is justified by 'business necessity.' '') id. (giving an example of a policy that may violate the Fair Housing Act and ECOA since ''the lender is unlikely to be able to show that the policy is compelled by business necessity''); *see also* Office of the Comptroller of the Currency, Federal Depository Insurance Corporation, Federal Reserve Board, Office of Thrift Supervision, National Credit Union Administration, The Interagency Fair Lending Examination Procedures app. at 28, August 2009, available at *http://www.ffiec.gov/pdf/fairappx.pdf.*

promulgated a regulation recognizing that section 805 of the Act [117] does not prevent consideration, in the purchasing of loans, of factors that are necessary to a business.[118] In addition, in 1988 the House Committee on the Judiciary, in advancing a bill amending the Fair Housing Act, recognized that liability should not attach when a justification is necessary to the covered entity's business.[119] HUD's view is also consistent with Congress's 1991 enactment of legislation codifying that, in the employment context, a practice that has a disparate impact must be consistent with ''business necessity'' and must also be ''job related.'' [120] HUD also notes that a similar necessity requirement is found in ECOA, which requires that a challenged practice ''meets a legitimate business need.'' [121] HUD's final rule therefore uses language that is consistent with its longstanding interpretation of the Fair Housing Act, comparable to the protections afforded under Title VII and ECOA, and fairly balances the interests of all parties.

Issue: A commenter expressed concern that requiring a ''necessary'' relationship may interfere with loss mitigation efforts, including those under the Home Affordable Modification Program (HAMP) and Home Affordable Refinance Program (HARP)—federal programs that encourage mortgage servicers to offer modifications of loans or refinances—because such efforts are voluntary and participation in them may not be perceived as ''necessary.''

HUD Response: Since at least the date of issuance of the Joint Policy Statement in 1994, lenders have been on notice that they must prove the necessity of a challenged practice to their business under both the Fair Housing Act and ECOA. This requirement has not prevented lenders or servicers from engaging in effective loss mitigation efforts. The mere fact that a policy is voluntarily adopted does not preclude it from being necessary to achieve a substantial, legitimate, nondiscriminatory interest. By formalizing the process of proving business necessity in a rule that clearly allocates the burdens of proof among the parties, HUD is not changing substantive law, but merely clarifying the contours of an available defense so that lenders may rely upon it with greater clarity as to how it applies.

Issue: A commenter expressed the concern that requiring a respondent or defendant to prove necessity would subject the respondent or defendant to unnecessary and possibly frivolous investigations and litigation. Another commenter took the opposite position, stating that the rule would not create excessive litigation exposure for respondents or defendants because numerous procedural mechanisms exist to dispose of meritless cases. A commenter stated that, at the second stage of the burden-shifting analysis, a defendant should have the opportunity to demonstrate not only a legally sufficient justification, but also that the charging party or plaintiff did not satisfy its prima facie case because the challenged practice did not result in a discriminatory effect.

HUD Response: Given how the discriminatory effects framework has been applied to date by HUD and by the courts, HUD does not believe that the rule will lead to frivolous investigations or create excessive litigation exposure for respondents or defendants. As discussed above, since at least 1994, when the Joint Policy Statement was issued, lenders have known that they must prove the necessity of a challenged practice to their business. Moreover, HUD believes that promulgation of this rule—with its clear allocation of burdens and clarification of the showings each party must make—has the potential to decrease or simplify this type of litigation. For example, with a clear, uniform standard, covered entities can conduct consistent self-testing and compliance reviews, document their substantial, legitimate nondiscriminatory interests, and resolve potential issues so as to prevent future litigation. A uniform standard is also a benefit to entities operating in multiple jurisdictions. To the extent that the rule results in more plaintiffs being aware of potential effects liability under the Fair Housing Act, it should have the same impact on covered entities, resulting in greater awareness and compliance with the Fair Housing Act. Additionally, as a commenter noted, the Federal Rules of Civil Procedure provide various means to dispose of meritless claims, including Rules 11, 12, and 56. Moreover, a respondent or defendant may avoid liability by rebutting the charging party's or plaintiff's proof of discriminatory effect.[122] If the fact-finder decides that the charging party or plaintiff has not proven that the challenged practice resulted in a discriminatory effect, liability will not attach.

Issue: A commenter expressed concern that, under the proposed rule, a legally sufficient justification under § 100.500(b)(1) may not be hypothetical or speculative but a discriminatory effect under § 100.500(a) may be, creating an imbalance in the burden of proof in favor of the charging party or plaintiff.

HUD Response: This comment indicates a misunderstanding of what § 100.500 requires. Requiring the respondent or defendant to introduce evidence (instead of speculation) proving that a challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests in order to benefit from the defense to liability is not different in kind from requiring the charging party or plaintiff to introduce evidence (not speculation) proving that a challenged practice caused or will predictably cause a discriminatory effect. As discussed in this preamble, the language of the Act makes clear that it is intended to address discrimination that has occurred or is about to occur, and not hypothetical or speculative discrimination.

D. Less Discriminatory Alternative, § 100.500(b)(2)

Some comments were received with respect to § 100.500(b)(2) of the proposed rule. With that provision, HUD proposed that a practice with a discriminatory effect may be justified only if the respondent's or defendant's interests cannot be served by another practice with a less discriminatory effect. In response to these comments, the final rule makes one slight revision to the proposed provision by substituting ''could not be served'' for ''cannot be served.''

Issue: A commenter requested that HUD replace ''cannot be served'' with ''would not be served'' because, under the Supreme Court's analysis in *Wards Cove,* a plaintiff cannot prevail by showing that a less discriminatory alternative could in theory serve the defendant's business interest. This commenter also stated that, in order for liability to attach, a less discriminatory alternative must have been known to and rejected by the respondent or

[117] 42 U.S.C. 3605.

[118] *See* 24 CFR 100.125(c); *cf. Darst-Webbe Tenant Ass'n Bd.* v. *St. Louis Hous. Auth.,* 417 F.3d, at 902 (the challenged practice must be ''necessary to the attainment of'' the defendant's objectives) (internal citation omitted); *see also Affordable Hous. Dev. Corp.* v. *City of Fresno,* 433 F.3d 1182, 1195 (9th Cir. 2006) (describing the Eighth Circuit's approach as ''sound'').

[119] H.R. Rep. No. 100–711, at 2191 (1988) (''The Committee does not intend that those purchasing mortgage loans be precluded from taking into consideration factors justified by business necessity.'').

[120] *See* 42 U.S.C. 2000e–2(k)(1)(A).

[121] 12 CFR part 1002, Supp. I, Official Staff Commentary, Comment 6(a)(2).

[122] *See, e.g., Dothard* v. *Rawlinson,* 433 U.S. 321, 331 (1977) (Title VII case explaining that a defendant is ''free to adduce countervailing evidence of his own'' in order to discredit a plaintiff's evidence of disparate impact).

defendant. Other commenters stated that, in order for liability to attach, the alternative practice must be equally effective as the challenged practice, or at least as effective as the challenged practice, with some of these commenters pointing to *Wards Cove* in support of this position. A number of other commenters, on the other hand, cited to Fair Housing Act case law for the proposition that liability should attach unless the less discriminatory alternative would impose an undue hardship on the respondent or defendant under the circumstances of the particular case.

HUD Response: HUD agrees that a less discriminatory alternative must serve the respondent's or defendant's substantial, legitimate nondiscriminatory interests, must be supported by evidence, and may not be hypothetical or speculative. For greater consistency with the terminology used in HUD's (and other federal regulatory agencies') previous guidance in the Joint Policy Statement,[123] the final rule replaces ''cannot be served'' with ''could not be served.'' A corresponding change of ''can'' to ''could'' is also made in § 100.500(c)(3) of the final rule. HUD does not believe the rule's language needs to be further revised to state that the less discriminatory alternative must be ''equally effective,'' or ''at least as effective,'' in serving the respondent's or defendant's interests; the current language already states that the less discriminatory alternative must serve the respondent's or defendant's interests, and the current language is consistent with the Joint Policy Statement, with Congress's codification of the disparate impact standard in the employment context,[124] and with judicial interpretations of the Fair Housing Act.[125] The additional modifier ''equally effective,'' borrowed from the superseded *Wards Cove* case, is even less appropriate in the housing context than in the employment area in light of the wider range and variety of practices covered by the Act that are not readily quantifiable. For a similar reason, HUD does not adopt the suggestion that the less discriminatory alternative proffered by the charging party or plaintiff must be accepted unless it creates an ''undue hardship'' on the respondent or defendant. The ''undue hardship'' standard, which is borrowed from the reasonable accommodation doctrine in disability law, would place too heavy a burden on the respondent or defendant.

In addition, HUD does not agree with the commenter who stated that *Wards Cove* requires the charging party or plaintiff to show that, prior to litigation, a respondent or defendant knew of and rejected a less discriminatory alternative,[126] or that *Wards Cove* even governs Fair Housing Act claims. HUD believes that adopting this requirement in the housing context would be unjustified because it would create an incentive not to consider possible ways to produce a less discriminatory result. Encouraging covered entities not to consider alternatives would be inconsistent with Congress's goal of providing for fair housing throughout the country.

Issue: Two commenters expressed concern that, under the proposed rule's language, the discriminatory effect of an alternative would be considered but a lender's concerns such as credit risk would be irrelevant.

HUD Response: HUD believes these commenters' concerns will not be realized in practice because a less discriminatory alternative need not be adopted unless it could serve the substantial, legitimate, nondiscriminatory interest at issue. The final rule specifically provides that the interests supporting a challenged practice are relevant to the consideration of whether a less discriminatory alternative exists. As stated in § 100.500(c)(3), the charging party or plaintiff must show that the less discriminatory alternative could serve the ''interests supporting the challenged practice.'' Thus, if the lender's interest in imposing the challenged practice relates to credit risk, the alternative would also need to effectively address the lender's concerns about credit risk.

E. Allocations of Burdens of Proof in § 100.500(c)

In the proposed rule, HUD set forth a burden-shifting framework in which the plaintiff or charging party would bear the burden of proving a prima facie case of discriminatory effect, the defendant or respondent would bear the burden of proving a legitimate, nondiscriminatory interest for the challenged practice, and the plaintiff or charging party would bear the burden of proving that a less discriminatory alternative exists.

Issue: Some commenters stated that the plaintiff or charging party should bear the burden of proof at all stages of the proceedings, either citing *Wards Cove* in support of this position or reasoning that, in our legal system, the plaintiff normally carries the burden of proving each element of his claim. Other commenters asked HUD to modify § 100.500(c)(3) in order to place the burden of proving no less discriminatory alternative on the defendant or respondent. Those recommending that the burden allocation be modified in this way reasoned that the respondent or defendant is in a better position to bear this burden because of greater knowledge of, and access to, information concerning the respondent's or defendant's interests and whether a less discriminatory alternative could serve them. Several commenters stated that this is particularly true in the context of government decisions, as complainants and plaintiffs will generally be outside the political decision-making process, and in the context of insurance and lending decisions, where proprietary information and formulas used in the decision making process may be vigorously protected.

Commenters stated that complainants and plaintiffs may not have the capacity to evaluate possible less discriminatory alternatives. Some commenters also pointed out that assigning this burden to the respondent or defendant may avoid intrusive and expensive discovery into a respondent's or defendant's decision-making process, and would incentivize entities subject to the Act to consider less discriminatory options when making decisions. Commenters also stated that courts have placed this burden of proof on the defendant, others have placed it on the party for whom proof is easiest, and reliance on Title VII is inappropriate because of the unique nature of less discriminatory alternatives in Fair Housing Act cases.

HUD Response: HUD believes that the burden of proof allocation in § 100.500(c) is the fairest and most

[123] *See* Joint Policy Statement, 59 FR at 18269 (''Even if a policy or practice that has a disparate impact on a prohibited basis can be justified by business necessity, it still may be found to be discriminatory if an alternative policy or practice could serve the same purpose with less discriminatory effect.'')

[124] *See* 42 U.S.C. 2000e–2(k)(1)(A)(i) (''the concept of 'alternative employment practice' '' under Title VII ''shall be in accordance with the law as it existed on June 4, 1989''); *Albemarle Paper Co.* v. *Moody,* 422 U.S. 405, 425 (1975) (''[I]t remains open to the complaining party to show that other tests or selection devises, without a similarly undesirable racial effect, would also serve the employer's legitimate interest.'').

[125] *See, e.g., Darst-Webbe,* 417 F.3d at 906 (''plaintiffs must offer a viable alternative that satisfies the Housing Authority's legitimate policy objectives while reducing the [challenged practice's] discriminatory impact''); *Huntington,* 844 F.2d at 939 (analyzing whether the ''[t]own's goal * * * can be achieved by less discriminatory means''); *Rizzo,* 564 F.2d at 159 (it must be analyzed whether an alternative ''could be adopted that would enable [the defendant's] interest to be served with less discriminatory impact.'').

[126] *See Wards Cove Packing Co., Inc.* v. *Atonio,* 490 U.S. 642, 660–61 (1989).

reasonable approach to resolving the claims. As the proposed rule stated, this framework makes the most sense because it does not require either party to prove a negative. Moreover, this approach will ensure consistency in applying the discriminatory effects standard while creating the least disruption because, as discussed earlier in this preamble, HUD and most courts utilize a burden-shifting framework,[127] and most federal courts using a burden-shifting framework allocate the burdens of proof in this way.[128] In addition, HUD notes that this burden-shifting scheme is consistent with the Title VII discriminatory effects standard codified by Congress in 1991.[129] It is also consistent with the discriminatory effects standard under ECOA,[130] which borrows from Title VII's burden-shifting framework.[131] There is significant overlap in coverage between ECOA, which prohibits discrimination in credit, and the Fair Housing Act, which prohibits discrimination in residential real estate-related transactions.[132] Thus, under the rule's framework, in litigation involving claims brought under both the Fair Housing Act and ECOA, the parties and the court will not face the burden of applying inconsistent methods of proof to factually indistinguishable claims. Having the same allocation of burdens under the Fair Housing Act and ECOA will also provide for less confusion and more consistent decision making by the fact finder in jury trials.

With respect to expressed concerns about the ability of plaintiffs or complainants to demonstrate a less discriminatory alternative, plaintiffs in litigation in federal courts may rely on Rule 26(b)(1) of the Federal Rules of Civil Procedure for the discovery of information ''that is relevant to any party's claim or defense,'' [133] and parties in an administrative proceeding may rely on Rule 26(b)(1) and a similar provision in HUD's regulations.[134] The application of those standards would plainly provide for the discovery of information regarding the alternatives that exist to achieve an asserted interest, the extent to which such alternatives were considered, the reasons why such alternatives were rejected, and the data that a plaintiff or plaintiff's expert could use to show that the defendant did not select the least discriminatory alternative. An appropriately tailored protective order can be issued by the court to provide access to proprietary information in the context of cases involving confidential business information, such as those involving insurance or lending, while providing to respondents and defendants adequate protection from disclosure of this information. Moreover, as noted above, in administrative adjudications, it is the charging party, not non-intervening complainants, who bear this burden of proof.

F. Application of Discriminatory Effects Liability

Comments were received with respect to how the discriminatory effects standard would be applied and how it might impact covered entities. These comments expressed varying concerns, including the retroactivity of the rule, its application to the insurance and lending industries, and its impact on developing affordable housing.

Issue: A commenter stated that each of the cases listed in the proposed rule as examples of practices with a segregative effect involved a government actor, while another commenter asked HUD to clarify whether liability may attach to private parties.

HUD Response: Liability for a practice that has an unjustified discriminatory effect may attach to either public or private parties according to the standards in § 100.500, because there is nothing in the text of the Act or its legislative history to indicate that Congress intended to distinguish the manner in which the Act applies to public versus private entities.[135]

Issue: A commenter expressed the opinion that the Fair Housing Act does not grant HUD the power to promulgate retroactive rules, and therefore HUD should make clear that the final rule applies prospectively only.

HUD Response: This final rule embodying HUD's and the federal courts' longstanding interpretation of the Act to include a discriminatory effects standard will apply to pending and future cases. HUD has long recognized, as have the courts, that the Act supports an effects theory of liability. This rule is not a change in HUD's position but rather a formal interpretation of the Act that clarifies the appropriate standards for proving a violation under an effects theory. As such, it ''is no more retroactive in its operation than is a judicial determination construing and applying a statute to a case in hand.'' [136]

Issue: A commenter stated that the most appropriate remedy for a violation of the Act under an effects theory is declaratory or injunctive relief. This commenter expressed the opinion that the use of penalties or punitive damages generally does not serve the underlying purpose of the Fair Housing Act to remedy housing discrimination.

HUD Response: HUD disagrees with the commenter. The Fair Housing Act specifically provides for the award of damages—both actual and punitive—and penalties.[137]

Issue: Commenters from the insurance industry expressed a number of concerns about the application of the proposed rule to insurance practices. Some commenters stated that application of the disparate impact standard would interfere with state regulation of insurance in violation of the McCarran-Ferguson Act (15 U.S.C. 1011–1015) or the common law ''filed rate doctrine.'' Some commenters stated that HUD's use of *Ojo* v. *Farmers Group, Inc.,* 600 F.3d 1205 (9th Cir. 2010), in the preamble of the proposed rule was not appropriate.

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[127] *See supra* notes 29–33.

[128] *See supra* notes 34, 35.

[129] *See* 42 U.S.C. 2000e–2(k).

[130] ECOA prohibits discrimination in credit on the basis of race and other enumerated criteria. *See* 15 U.S.C. 1691.

[131] *See* S. Rep. No. 94–589, at 4–5 (1976) (''[J]udicial constructions of antidiscrimination legislation in the employment field, in cases such as *Griggs* v. *Duke Power Company,* 401 U.S. 424 (1971), and *Albemarle Paper Co.* v. *Mood,* [422 U.S. 405 (1975)], are intended to serve as guides in the application of [ECOA], especially with respect to the allocations of burdens of proof.''); 12 CFR 1002.6(a) (''The legislative history of [ECOA] indicates that the Congress intended an 'effects test' concept, as outlined in the employment field by the Supreme Court in the cases of *Griggs* v. *Duke Power Co.,* 401 U.S. 424 (1971) and *Albemarle Paper Co.* v. *Moody,* 422 U.S. 405 (1975), to be applicable to a creditor's determination of creditworthiness.''); 12 CFR part 1002, Supp. I, Official Staff Commentary, Comment 6(a)–2 (''Effects test. The effects test is a judicial doctrine that was developed in a series of employment cases decided by the Supreme Court under Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*), and the burdens of proof for such employment cases were codified by Congress in the Civil Rights Act of 1991 (42 U.S.C. 2000e–2).'').

[132] *See* Joint Policy Statement, 59 FR 18266. Indeed, the Joint Policy Statement analyzed the standard for proving disparate impact discrimination in lending under the Fair Housing Act and under ECOA without any differentiation. *See* 59 FR 18269.

[133] Fed. R. Civ. P. 26(b)(1).

[134] *See* 24 CFR 180.500(b) (''parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the proceeding'').

[135] *See* 42 U.S.C. 3602(f) (defining ''discriminatory housing practice'' as ''an act that is unlawful under section 804, 805, 806, or 818,'' none of which distinguish between public and private entities); *see also Nat'l Fair Hous. Alliance, Inc.* v. *Prudential Ins. Co. of Am.,* 208 F. Supp. 2d 46, 59–60 & n.7 (D.D.C. 2002) (applying the same impact analysis to a private entity as to public entities, and noting that a ''distinction between governmental and non-governmental bodies finds no support in the language of the [Act] or in [its] legislative history'').

[136] *Pope* v. *Shalala,* 998 F.2d 473, 483 (7th Cir. 1993) (quoting *Manhattan General Equip. Co.* v. *Comm'r,* 297 U.S. 129, 135 (1936)).

[137] *See* 42 U.S.C. 3612–14.

HUD Response: HUD has long interpreted the Fair Housing Act to prohibit discriminatory practices in connection with homeowner's insurance,[138] and courts have agreed with HUD, including in *Ojo* v. *Farmers Group.*[139] Moreover, as discussed above, HUD has consistently interpreted the Act to permit violations to be established by proof of discriminatory effect. By formalizing the discriminatory effects standard, the rule will not, as one commenter suggested, ''undermine the states' regulation of insurance.'' The McCarran-Ferguson Act provides that ''[n]o Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance * * * unless such Act specifically relates to the business of insurance.'' McCarran-Ferguson does not preclude HUD from issuing regulations that may apply to insurance policies. Rather, McCarran-Ferguson instructs courts on how to construe federal statutes, including the Act. How the Act should be construed in light of McCarran-Ferguson depends on the facts at issue and the language of the relevant State law ''relat[ing] to the business of insurance.'' Because this final rule does not alter the instruction of McCarran-Ferguson or its application as described in *Ojo* v. *Farmers Group,* it will not interfere with any State regulation of the insurance industry.

Issue: Some commenters stated that liability for insurance practices based on a disparate impact standard of proof is inappropriate because insurance is risk-based and often based on a multivariate analysis. A commenter wrote that ''to avoid creating a disparate impact, an insurer would have to charge everyone the same rate, regardless of risk,'' or might be forced to violate state laws that require insurance rates to be actuarially sound estimates of the expected value of all future costs associated with an individual risk transfer.

HUD Response: HUD believes that these concerns are misplaced. First, they presume that once a discriminatory effect is shown, the policy at issue is *per se* illegal. This is incorrect. Rather, as § 100.500 makes clear, the respondent or defendant has a full opportunity to defend the business justifications for its policies. This ''burden-shifting framework'' distinguishes ''unnecessary barriers proscribed by the [Act] from valid policies and practices crafted to advance legitimate interests.'' [140] Thus, even if a policy has a discriminatory effect, it may still be legal if supported by a legally sufficient justification.

Issue: Some commenters asked HUD to exempt insurance pricing from the rule, exempt state Fair Access to Insurance Requirements (''FAIR'') plans, or establish safe harbors for certain risk-related factors.

HUD Response: Creating exemptions or safe harbors related to insurance is unnecessary because, as discussed above, insurance practices with a legally sufficient justification will not violate the Act. Moreover, creating exemptions beyond those found in the Act would run contrary to Congressional intent.[141]

Issue: Another commenter stated that the ''burden of proof issues'' are difficult for insurers because they do not collect data on race and ethnicity and state insurance laws may prohibit the collection of such data.

HUD Response: The burden of proof is not more difficult for insurers than for a charging party or plaintiff alleging that an insurance practice creates a discriminatory effect. The charging party or plaintiff must initially show the discriminatory effect of the challenged practice using appropriate evidence that demonstrates the effect. If the charging party or plaintiff makes that showing, the burden shifts to the insurer to show that the challenged practice is necessary to achieve one or more of its substantial, legitimate, nondiscriminatory interests.

Issue: A commenter expressed concern that the rule may create strict liability for entities complying with contractual obligations set by third parties, including the federal government.

HUD Response: The commenter misconstrues the discriminatory effects standard, which permits a defendant or respondent to defend against a claim of discriminatory effect by establishing a legally sufficient justification, as specified in § 100.500.

Issue: Another commenter expressed concern that the citation to *Miller* v. *Countrywide Bank, N.A.,* 571 F. Supp. 2d 251 (D. Mass. 2008), in the preamble to the proposed rule suggested that liability could exist under the Act for the neutral actions of third parties and that such liability would be inconsistent with the Supreme Court's decision in *Meyer* v. *Holley,* 537 U.S. 280 (2003). This commenter requested that HUD revise the proposed rule to articulate the standard set forth in *Meyer.*

HUD Response: HUD does not agree with the commenter's suggestion. HUD recognizes that pursuant to *Meyer,* liability under the Act for corporate officers is determined by agency law. The proposed rule cited *Miller* as an example of how a lender's facially neutral policy allowing employees and mortgage brokers the discretion to price loans may be actionable under the Fair Housing Act. The decision in *Miller* is not inconsistent with the Supreme Court's ruling on agency in *Meyer,* and therefore HUD does not believe that the final rule needs to be revised in response to this comment.

Issue: Several commenters expressed concern that adoption of the proposed discriminatory effects standard would lead to lawsuits challenging lenders' use of credit scores, other credit assessment standards, or automated underwriting. A commenter stated that a lender's consideration of credit score or other credit assessment standards such as a borrower's debt-to-income ratio may have a disparate impact because of demographic differences. This commenter cited studies which indicate that borrowers who live in zip codes with a higher concentration of minorities are more likely to have lower credit scores and fewer savings. A commenter stated that credit scores are often used as the determining factor in a lender's origination practices and that certain underwriting software and investor securitization standards require a minimum credit score. The commenter further stated that HUD's Federal Housing Administration (FHA) program has recognized the value of credit scores in setting underwriting standards for FHA insured loans. According to the commenter, lenders have little ability or desire to override credit score standards, because manual underwriting is time consuming and staff-intensive. Another commenter expressed concern that, even if a lender was successful in defending its credit risk assessment practices under the burden-shifting approach, the lender would have to defend an expensive lawsuit and suffer harm to its reputation.

[138] *See, e.g.,* 24 CFR 100.70(d)(4) (Mar. 15, 1989) (defining ''other prohibited sale and rental conduct'' to include ''refusing to provide * * * property or hazard insurance for dwellings or providing such * * * insurance differently'' because of a protected class); 53 FR 44,992, 44,997 (Nov. 7, 1988) (preamble to proposed regulations stating that ''discriminatory refusals to provide * * * adequate property or hazard insurance * * * has been interpreted by the Department and by courts to render dwellings unavailable'').

[139] *See Ojo* v. *Farmers Group, Inc.,* 600 F.3d at 1208; *NAACP* v. *American Family Mut. Ins. Co.,* 978 F.2d 287, 297–301 (7th Cir. 1993); *Nationwide Mut. Ins. Co.* v. *Cisneros,* 52 F.3d 1351, 1355–1360 (6th Cir. 1995). *But see Mackey* v. *Nationwide Ins. Cos.,* 724 F.2d 419, 423–25 (4th Cir. 1984) (pre-Fair Housing Amendments Act and regulations pursuant thereto holding that Act does not cover insurance).

[140] *Graoch,* 508 F.3d at 374–75.

[141] *See Graoch,* 508 F.3d at 375 (''we cannot create categorical exemptions from [the Act] without a statutory basis'' and ''[n]othing in the text of the FHA instructs us to create practice-specific exceptions'').

Commenters from the lending industry also stated that the rule may have a chilling effect on lending in lower income communities. A commenter stated that the rule will create uncertainty in a skittish market, so lenders will be cautious about lending in lower income communities for fear of a legal challenge. Some of these commenters reasoned that underwriting requirements and risk requirements pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act (Pub. L. 111–203, approved July 21, 2010)), such as ability to repay, down payment requirements, and qualified residential mortgages, may result in a disparate impact because of demographic differences. Another commenter explained that the rule would eliminate in-portfolio mortgage loans at community banks, which provide mortgage credit to borrowers who may not qualify for a secondary market transaction.

HUD Response: HUD does not believe that the rule will have a chilling effect on lending in lower income communities or that it will encourage lawsuits challenging credit scores, other credit assessment standards, or the requirements of the Dodd-Frank Act. As discussed above, the rule does not change the substantive law; eleven federal courts of appeals have recognized discriminatory effects liability under the Act and over the years courts have evaluated both meritorious and non-meritorious discriminatory effects claims challenging lending practices.[142] As HUD has reiterated, the rule formalizes a substantive legal standard that is well recognized by both courts and participants in the lending industry for assessing claims of discriminatory effects. Indeed, in the lending context, at least since the issuance of the Joint Policy Statement nearly 18 years ago, non-depository lenders, banks, thrifts, and credit unions have been on notice that federal regulatory and enforcement agencies, including HUD and the Department of Justice, may apply a disparate impact analysis in their examinations and investigations under both the Fair Housing Act and ECOA. The regulations and Staff Commentary implementing ECOA also explicitly prohibit unjustified discriminatory effects.[143] Thus, neither a chilling effect nor a wealth of new lawsuits can be expected as a result of this rule. Rather, HUD anticipates that this rule will encourage the many lenders and other entities that already conduct internal discriminatory effects analyses of their policies to review those analyses in light of the now uniform standard for a legally sufficient justification found in § 100.500. Indeed, lender compliance should become somewhat easier due to the rule's clear and nationally uniform allocation of burdens and clarification of the showings each party must make.

Issue: Some commenters expressed concern that faced with the threat of disparate impact liability, lenders might extend credit to members of minority groups who do not qualify for the credit.

HUD Response: The Fair Housing Act does not require lenders to extend credit to persons not otherwise qualified for a loan. As discussed previously, the final rule formalizes a standard of liability under the Act that has been in effect for decades. HUD is unaware of any lender found liable under the discriminatory effects standard for failing to make a loan to a member of a minority group who did not meet legitimate nondiscriminatory credit qualifications.

Issue: Several other commenters expressed a concern that discriminatory effects liability might have a chilling effect on efforts designed to preserve or develop affordable housing, including pursuant to HUD's own programs, because much of the existing affordable housing stock is located in areas of minority concentration. A commenter stated that resources designed to support the development of affordable housing will be ''deflect[ed]'' away so as to respond to claims of disparate impact discrimination. Another commenter requested that HUD issue guidance to the affordable housing industry as they administer HUD programs.

Other commenters expressed concern about potential liability for administrators of the federal Low Income Housing Tax Credit (LIHTC) program. These commenters reasoned that the concentration of affordable housing stock in low-income areas, combined with federal requirements and incentives which encourage the deployment of tax credits in low-income communities, may result in discriminatory effects liability for agencies administering the LIHTC program. Several commenters asked HUD to specify in the final rule that the mere approval of LIHTC projects in minority areas alone does not establish a prima facie case of disparate impact under the Act or that locating LIHTC projects in low-income areas is a legally sufficient justification to claims of disparate impact discrimination. A commenter requested that HUD provide guidance to such agencies.

HUD Response: HUD does not expect the final rule to have a chilling effect on the development and preservation of affordable housing because, as discussed above, the rule does not establish a new form of liability, but instead serves to formalize by regulation a standard that has been applied by HUD and the courts for decades, while providing nationwide uniformity of application. The rule does not mandate that affordable housing be located in neighborhoods with any particular characteristic, but requires, as the Fair Housing Act already does, only that housing development activities not have an unjustified discriminatory effect.

Concerns of a chilling effect on affordable housing activities are belied by the prevalence of cases where the discriminatory effects method of proof has been used by plaintiffs seeking to develop such housing [144] and even by the less frequent instances where

[142] *Compare Ramirez* v. *GreenPoint Mortg. Funding, Inc.,* 633 F. Supp. 2d 922, 927–28 (N.D. Cal. 2008) (holding that the Act permits disparate impact claims and finding that plaintiffs adequately pled a specific and actionable policy that had a disparate impact on members of a protected class); *Miller* v. *Countrywide Bank, N.A.,* 571 F. Supp. 2d 251, 258 (D. Mass. 2008) (denying defendants motion to dismiss and finding that plaintiffs adequately pled a specific and actionable policy, a disparate impact, and facts raising a sufficient inference of causation); and *Hoffman* v. *Option One Mortg. Corp.,* 589 F. Supp. 2d 1009, 1011–12 (N.D. Ill. 2008) (holding that the Actpermits disparate impact claims and finding that plaintiffs adequately pled a specific and actionable policy, a disparate impact, and facts raising a sufficient inference of causation), *with Ng* v. *HSBC Mortgage Corp.,* No. 07–CV–5434, 2010 WL 889256, *12 (E.D.N.Y. Mar. 10, 2010) (dismissing plaintiff's claim of disparate impact discrimination and finding that the claim was ''alleged with little more than buzzwords and conclusory labels'').

[143] *See* 12 CFR 1002.6(a); 12 CFR part 1002, Supp. I, Official Staff Commentary, Comment 6(a)–2 ; *see also* Consumer Financial Protection Bureau Bulletin 2012–04 (Apr. 18, 2012) (''CFPB reaffirms that the legal doctrine of disparate impact remains applicable as the Bureau exercises its supervision and enforcement authority to enforce compliance with the ECOA.'').

[144] *See, e.g., Huntington Branch,* 844 F.2d at 926 (reversing district court and finding Fair Housing Act violations based on discriminatory effect of town's refusal to rezone site for affordable housing); *Greater New Orleans Fair Hous. Action Ctr.* v. *St. Bernard Parish,* 648 F. Supp. 2d 805 (E.D. La. 2009) (finding parish's subversion of attempts to develop affordable housing had a discriminatory effect in violation of the Fair Housing Act); *Dews* v. *Town of Sunnyvale,* 109 F. Supp. 2d 526 (N.D. Tex. 2000) (finding that developer established Fair Housing Act violation based on Town's rejection of development application under discriminatory effects method); *Sunrise Dev.* v. *Town of Huntington,* 62 F. Supp. 2d 762 (E.D.N.Y. 1999) (finding the plaintiff had established prima facie case of discriminatory effect and granting preliminary injunction requiring town to consider plaintiff's zoning application); *Summerchase Ltd. Pshp. I* v. *City of Gonzales,* 970 F. Supp. 522 (M.D. La. 1997) (denying defendant's motion for summary judgment on developer's claim that parish's denial of building permits for affordable housing development had a discriminatory effect in violation of the Fair Housing Act).

agencies administering affordable housing programs have been defendants.[145] Rather than indicating a chilling effect, existing case law shows that use of the discriminatory effects framework has promoted the development of affordable housing, while allowing due consideration for substantial, legitimate, nondiscriminatory interests involved in providing such housing. Moreover, recipients of HUD funds already must comply with a variety of civil rights requirements. This includes the obligation under Title VI of the Civil Rights Act of 1964 and its applicable regulations to refrain from discrimination, either by intent or effect, on the basis of race, color, or national origin; the obligation under the Fair Housing Act to affirmatively further fair housing in carrying out HUD programs; and HUD program rules designed to foster compliance with the Fair Housing Act and other civil rights laws. As discussed throughout this preamble, allegations of discriminatory effects discrimination must be analyzed on a case-by-case basis using the standards set out in § 100.500. HUD will issue guidance addressing the application of the discriminatory effects standard with respect to HUD programs.

Issue: Like commenters who requested ''safe harbors'' or exemptions for the insurance and lending industries, some commenters requested that the proposed rule be revised to provide ''safe harbors'' or exemptions from liability for programs designed to preserve affordable housing or revitalize existing communities. A commenter requested that the final rule provide safe harbors for state and local programs that have legitimate policy and safety goals such as protecting water resources, promoting transit orientated development, and revitalizing communities. Other commenters requested safe harbors or exemptions for entities that are meeting requirements or standards established by federal or state law or regulation, such as the Federal Credit Union Act, the Dodd-Frank Act, HAMP and HARP, or by government-sponsored enterprises or investors.

HUD Response: HUD does not believe that the suggested safe harbors or exemptions from discriminatory effects liability are appropriate or necessary. HUD notes that, in seeking these exemptions, the commenters appear to misconstrue the discriminatory effects standard, which permits practices with discriminatory effects if they are supported by a legally sufficient justification. The standard thus recognizes that a practice may be lawful even if it has a discriminatory effect. HUD notes further that Congress created various exemptions from liability in the text of the Act,[146] and that in light of this and the Act's important remedial purposes, additional exemptions would be contrary to Congressional intent.

Issue: Several commenters expressed concern that in complying with the new Dodd-Frank Act mortgage reforms, including in determining that consumers have an ability to repay, a lender necessarily ''will face liability under the Proposed Rule.''

HUD Response: HUD reiterates that the lender is free to defend any allegations of illegal discriminatory effects by meeting its burden of proof at § 100.500. Moreover, if instances were to arise in which a lender's efforts to comply with the Dodd-Frank Act were challenged under the Fair Housing Act's discriminatory effects standard of liability, those same activities most likely would be subject to a similar challenge under ECOA and Regulation B, which also prohibit lending practices that have a discriminatory effect based on numerous protected characteristics.[147] The Dodd-Frank Act created the Consumer Financial Protection Bureau to combat both unfair and deceptive practices and discriminatory practices in the consumer financial industry, and it gave the Consumer Financial Protection Bureau authority to enforce ECOA.[148] *See* Dodd-Frank Act sections 1402–1403 (enacting section 129B of the Truth in Lending Act ''to assure that consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive or abusive,'' and, as part of that section, requiring the Consumer Financial Protection Bureau to create regulations that prohibit ''abusive or unfair lending practices that promote disparities among consumers of equal credit worthiness but of different race, ethnicity, gender, or age''); *see also* Dodd-Frank Act section 1013(c) (establishing the Consumer Financial Protection Bureau's Office of Fair Lending and Equal Opportunity to provide enforcement of fair lending laws, including ECOA, and coordinate fair lending efforts within the Bureau and with other federal and state agencies); *id.* section 1085 (transferring regulatory authority for ECOA to the Consumer Financial Protection Bureau).

G. Illustrations of Practices With Discriminatory Effects

Consistent with HUD's existing Fair Housing Act regulations, which contain illustrations of practices that violate the Act, the proposed rule specified additional illustrations of such practices. The November 16, 2011, rule proposed to add illustrations to 24 CFR 100.65, 100.70 and 100.120. The final rule revises these illustrations in the manner described below.

Because the illustrations in HUD's existing regulations include practices that may violate the Act based on an intent or effects theory, and proposed § 100.65(b)(6) describes conduct that is already prohibited in § 100.65(b)(4)—the provision of housing-related services—and § 100.70(d)(4)—the provision of municipal services—this final rule eliminates proposed § 100.65(b)(6). This will avoid redundancy in HUD's Fair Housing Act regulations, and its elimination from the proposed rule is not intended as a substantive change.

Commenters raised the following issues with respect to the proposed rule's illustrations of discriminatory practices.

Issue: A commenter stated that the examples specified by the proposed rule describe the types of actions that the commenter's ''clients encounter regularly.'' Examples of potentially discriminatory laws or ordinances cited by commenters include ordinances in largely white communities that establish local residency requirements, limit the use of vouchers under HUD's Housing Choice Voucher program, or set large-lot density requirements. Commenters suggested that language should be added to proposed § 100.70(d)(5), which provides, as an example, ''[i]mplementing land-use rules, policies or procedures that restrict or deny housing opportunities in a manner that has a disparate impact or has the effect of creating, perpetuating, or increasing segregated housing patterns'' based on a protected class. Commenters stated that this example should include not just the word ''implementing,'' but also the words ''enacting'' ''maintaining,'' and/or ''applying'' because the discriminatory effect of a land-use decision may occur from the moment of enactment. A commenter suggested that the word ''ordinances'' should be added to the example to make clear that the Act applies to all types of exclusionary land-use actions.

[145] *Compare, e.g., In re Adoption of 2003 Low Income Housing Tax Credit Qualified Allocation Plan,* 369 N.J. Super. 2 (N.J. Sup. Ct. App. Div. 2004) *with Inclusive Cmtys. Project, Inc.* v. *Tex. Dep't of Hous. & Cmty. Affairs,* 749 F. Supp. 2d 48 (N.D. Tex. 2010).

[146] *See, e.g.,* 42 U.S.C. 3603(b)(1) (exempting from most of section 804 of the Act an owner's sale or rental of his single-family house if certain conditions are met).

[147] *See* 15 U.S.C. 1691 *et seq;* 12 CFR part 1002.

[148] *See* 12 U.S.C. 5491 *et seq.*

HUD Response: HUD reiterates that the illustrations contained in HUD's regulations are merely examples. The scope and variety of practices that may violate the Act make it impossible to list all examples in a rule. Nevertheless, HUD finds it appropriate to revise proposed § 100.70(d)(5) in this final rule in order to confirm that a land-use ordinance may be discriminatory from the moment of enactment. The final rule therefore changes ''[i]mplementing land-use rules, policies, or procedures * * * '' to ''[e]nacting or implementing land-use rules, ordinances, policies, or procedures * * * .'' It is not necessary to add ''maintaining'' or ''applying'' to § 100.70(d)(5) because the meaning of these words in this context is indistinguishable from the meaning of ''implementing.''

Because the illustrated conduct may violate the Act under either an intent theory, an effects theory, or both, HUD also finds it appropriate to replace ''in a manner that has a disparate impact or has the effect of creating, perpetuating, or increasing segregated housing patterns'' because of a protected characteristic with ''otherwise make unavailable or deny dwellings because of'' a protected characteristic. As discussed in the ''Validity of Discriminatory Effects Liability under the Act'' section above, the phrase ''otherwise make unavailable or deny'' encompasses discriminatory effects liability. This revised language, therefore, is broader because it describes land-use decisions that violate the Act because of either a prohibited intent or an unjustified discriminatory effect. The final rule makes a similar revision to each of the illustrations so they may cover violations based on intentional discrimination or discriminatory effects.

Issue: A commenter requested that HUD add as an example the practice of prohibiting from housing individuals with records of arrests or convictions. This commenter reasoned that such blanket prohibitions have a discriminatory effect because of the disproportionate numbers of minorities with such records. The commenter stated further that HUD should issue guidance on this topic similar to guidance issued by the Equal Employment Opportunity Commission. Another commenter expressed concern that the rule would restrict housing providers from screening tenants based on criminal arrest and conviction records. This commenter also asked HUD to issue guidance to housing providers on appropriate background screening.

HUD Response: Whether any discriminatory effect resulting from a housing provider's or operator's use of criminal arrest or conviction records to exclude persons from housing is supported by a legally sufficient justification depends on the facts of the situation. HUD believes it may be appropriate to explore the issue more fully and will consider issuing guidance for housing providers and operators.

Issue: Several commenters suggested revisions to proposed § 100.120(b)(2), which specifies as an example ''[p]roviding loans or other financial assistance in a manner that results in disparities in their cost, rate of denial, or terms or conditions, or that has the effect of denying or discouraging their receipt on the basis of race, color, religion, sex, handicap, familial status, or national origin.'' These commenters stated that proposed § 100.120(b)(2) does not contain language concerning the second type of discriminatory effect, i.e., creating, perpetuating or increasing segregation. They urged HUD to add language making clear that the provision of loans or other financial assistance may result in either type of discriminatory effect.

In addition, several commenters asked HUD to clarify that mortgage servicing with a discriminatory effect based on a protected characteristic may violate the Act.

HUD Response: As discussed above, proposed § 100.120(b)(2) is revised in the final rule to cover both intentional discrimination and discriminatory effects. HUD also agrees that residential mortgage servicing is covered by the Act. It is a term or condition of a loan or other financial assistance, covered by section 805 of the Act.[149] Accordingly, the final rule adds a § 100.130(b)(3), which provides an illustration of discrimination in the terms or conditions for making available loans or financial assistance, in order to show that discriminatory loan servicing (and other discriminatory terms or conditions of loans and other financial assistance) violate the Act's proscription on ''discriminat[ing] * * * in the terms or conditions of [a residential real estate-related transaction].''

Issue: A commenter expressed concern that the language in proposed § 100.120(b)(2) would allow for lawsuits based only on statistical data produced under HMDA.

HUD Response: HUD and courts have recognized that analysis of loan level data identified though HMDA may indicate a disparate impact.[150] Such a showing, however, does not end the inquiry. The lender would have the opportunity to refute the existence of the alleged impact and establish a substantial, legitimate, nondiscriminatory interest for the challenged practice, and the charging party or plaintiff would have the opportunity to demonstrate that a less discriminatory alternative is available to the lender.

Issue: A commenter stated that HUD should not add any of the new examples unless the final rule makes clear that the specified practices are not *per se* violations of the Act, but rather must be assessed pursuant to the standards set forth in § 100.500. According to the commenter, the new examples may be misconstrued because they state only the initial finding described in § 100.500.

HUD Response: HUD agrees that, when a practice is challenged under a discriminatory effects theory, the practice must be reviewed under the standards specified in § 100.500. The final rule therefore adds a sentence to the end of § 100.5(b), which makes clear that discriminatory effects claims are assessed pursuant to the standards stated in § 100.500.

H. Other Issues

Issue: A commenter requested that HUD examine the overall compliance burden of the regulation on small businesses, noting that Executive Order 13563 requires a cost-benefit analysis.

HUD Response: In examining the compliance burden on small institutions, the governing authority is the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* which provides, among other things, that the requirements to do an initial and final regulatory flexibility analysis ''shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Thus, the focus is on whether the rule—and not the underlying statute or preexisting administrative practice and case law—will have a significant economic impact. For this rule, the impact primarily arises from the Fair Housing Act itself, not only as interpreted by HUD, but also as interpreted by federal courts. Because this final rule provides a uniform burden-shifting test for determining

[149] 42 U.S.C. 3605. Discrimination in residential mortgage servicing may also violate § 804 of the Act. 42 U.S.C. 3604.

[150] *See City of Memphis and Shelby Cnty.* v. *Wells Fargo, N.A.,* No. 09–2857–STA, 2011 U.S. Dist. LEXIS 48522 at *45 (W.D. Tenn. May 4, 2011); *Mayor and City Council of Baltimore* v. *Wells Fargo Bank, N.A.,* No. JFM–08–62, 2011 U.S. Dist. LEXIS 44013 (D. Md. April 22, 2011); *Steele* v. *GE Money Bank,* No. 08–C–1880, 2009 U.S. Dist. LEXIS 11536 (N.D. Ill. Feb. 17, 2009); *Taylor* v. *Accredited Home Lenders, Inc.,* 580 F. Supp. 2d 1062 (S.D. Cal. 2008).

whether a given action or policy has an unjustified discriminatory effect, the rule serves to reduce regulatory burden for all entities, large or small, by establishing certainty and clarity with respect to how a determination of unjustified discriminatory effect is to be made.

The requirement under the Fair Housing Act not to discriminate in the provision of housing and related services is the law of the nation. We presume that the vast majority of entities both large and small are in compliance with the Fair Housing Act. Furthermore, for the minority of entities that have, in the over 40 years of the Fair Housing Act's existence, failed to institutionalize methods to avoid engaging in illegal housing discrimination and plan to come into compliance as a result of this rulemaking, the costs will simply be the costs of compliance with a preexisting statute, administrative practice, and case law. Compliance with the Fair Housing Act has for almost 40 years included the requirement to refrain from undertaking actions that have an unjustified discriminatory effect. The rule does not change that substantive obligation; it merely formalizes it in regulation, along with the applicable burden-shifting framework.

Variations in the well-established discriminatory effects theory of liability under the Fair Housing Act, discussed earlier in the preamble, are minor and making them uniform will not have a significant economic impact. The allocation of the burdens of proof among the parties, described in the rule, are methods of proof that only come into play if a complaint has been filed with HUD, a state or local agency or a federal or state court; that is, once an entity has been charged with discriminating under the Fair Housing Act. The only economic impact discernible from this rule is the cost of the difference, if any, between defense of litigation under the burden-shifting test on the one hand, and defense of litigation under the balancing or hybrid test on the other. In all the tests, the elements of proof are similar. Likewise, the costs to develop and defend such proof under either the burden-shifting or balancing tests are similar. The only difference is at which stage of the test particular evidence must be produced. There would not, however, be a significant economic impact on a substantial number of small entities as a result of this rule.

Executive Order 13563 (Improving Regulations and Regulatory Review) reaffirms Executive Order 12866, which requires that agencies conduct a benefit/cost assessment for rules that ''have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities.'' As stated in Section VII of this preamble below, this rule is not ''economically significant'' within the meaning in Executive 12866, and therefore a full benefit/cost assessment is not required. This final rule does not alter the established law that facially neutral actions that have an unjustified discriminatory effect are violations of the Fair Housing Act. What this rule does is formalize that well-settled interpretation of the Act and provide consistency in how such discriminatory effects claims are to be analyzed.

VI. This Final Rule

For the reasons presented in this preamble, this final rule formalizes the longstanding interpretation of the Fair Housing Act to include discriminatory effects liability and establishes a uniform standard of liability for facially neutral practices that have a discriminatory effect. Under this rule, liability is determined by a burden-shifting approach. The charging party or plaintiff in an adjudication first must bear the burden of proving its prima facie case of either disparate impact or perpetuation of segregation, after which the burden shifts to the defendant or respondent to prove that the challenged practice is necessary to achieve one or more of the defendant's or respondent's substantial, legitimate, nondiscriminatory interests. If the defendant or respondent satisfies its burden, the charging party or plaintiff may still establish liability by demonstrating that these substantial, legitimate, nondiscriminatory interests could be served by a practice that has a less discriminatory effect.

A. Discriminatory Effect—Subpart G

1. Scope

This final rule adds a new sentence to the end of paragraph (b) in § 100.5, which states: ''The illustrations of unlawful housing discrimination in this part may be established by a practice's discriminatory effect, even if not motivated by discriminatory intent, consistent with the standards outlined in § 100.500.''

2. Discriminatory Effect Prohibited (§ 100.500)

Consistent with HUD's November 16, 2011, proposed rule, this final rule adds a new subpart G, entitled ''Discriminatory Effect,'' to its Fair Housing Act regulations in 24 CFR part 100. Section 100.500 provides that the Fair Housing Act may be violated by a practice that has a discriminatory effect, as defined in § 100.500(a), regardless of whether the practice was adopted for a discriminatory purpose. The practice may still be lawful if supported by a legally sufficient justification, as defined in § 100.500(b). The respective burdens of proof for establishing or refuting an effects claim are set forth in § 100.500(c). Section 100.500(d) clarifies that a legally sufficient justification may not be used as a defense against a claim of intentional discrimination. It should be noted that it is possible to bring a claim alleging both discriminatory effect and discriminatory intent as alternative theories of liability. In addition, the discriminatory effect of a challenged practice may provide evidence of the discriminatory intent behind the practice. This final rule applies to both public and private entities because the definition of ''discriminatory housing practice'' under the Act makes no distinction between the two.

3. Discriminatory Effect Defined (§ 100.500(a))

Section 100.500(a) provides that a ''discriminatory effect'' occurs where a facially neutral practice actually or predictably results in a discriminatory effect on a group of persons protected by the Act (that is, has a disparate impact), or on the community as a whole on the basis of a protected characteristic (perpetuation of segregation). Any facially neutral action, e.g., laws, rules, decisions, standards, policies, practices, or procedures, including those that allow for discretion or the use of subjective criteria, may result in a discriminatory effect actionable under the Fair Housing Act and this rule. For examples of court decisions regarding policies or practices that may have a discriminatory effect, please see the preamble to the proposed rule at 76 FR 70924–25.

4. Legally Sufficient Justification (§ 100.500(b))

Section 100.500(b), as set forth in the regulatory text of this final rule, provides that a practice or policy found to have a discriminatory effect may still be lawful if it has a ''legally sufficient justification.''

5. Burden of Proof (§ 100.500(c))

Under § 100.500(c), the charging party or plaintiff first bears the burden of proving its prima facie case: that is, that a practice caused, causes, or predictably will cause a discriminatory effect on a group of persons or a community on the basis of race, color, religion, sex, disability, familial status, or national origin. Once the charging party or the plaintiff has made its prima facie case, the burden of proof shifts to the respondent or defendant to prove that the practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent or defendant. If the respondent or defendant satisfies its burden, the charging party or plaintiff may still establish liability by proving that these substantial, legitimate, nondiscriminatory interests could be served by another practice that has a less discriminatory effect.

B. Illustrations of Practices With Discriminatory Effects

This final rule adds or revises the following illustrations of discriminatory housing practices:

The final rule adds to § 100.70 new paragraph (d)(5), which provides as an illustration of other prohibited conduct ''[e]nacting or implementing land-use rules, ordinances, policies, or procedures that restrict or deny housing opportunities or otherwise make unavailable or deny dwellings because of race, color, religion, sex, handicap, familial status, or national origin.''

Section 100.120, which gives illustrations of discrimination in the making of loans and in the provision of other financial assistance, is streamlined, and paragraph (b)(2) now reads as set forth in the regulatory text of this final rule

In § 100.130, the final rule also amends paragraph (b)(2) and adds new paragraph (b)(3). The words ''or conditions'' is added after ''terms,'' and ''cost'' is added to the list of terms or conditions in existing paragraph (b)(2). New paragraph (b)(3) includes servicing as an illustration of terms or conditions of loans or other financial assistance covered by section 805 of the Act: ''Servicing of loans or other financial assistance with respect to dwellings in a manner that discriminates, or servicing of loans or other financial assistance which are secured by residential real estate in a manner that discriminates, or providing such loans or financial assistance with other terms or conditions that discriminate, because of race, color, religion, sex, handicap, familial status, or national origin.''

VII. Findings and Certifications

Regulatory Review—Executive Orders 13563 and 12866

Executive Order 13563 (''Improving Regulation and Regulatory Review'') directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs, emphasizes the importance of quantifying both costs and benefits, of harmonizing rules, of promoting flexibility, and of periodically reviewing existing rules to determine if they can be made more effective or less burdensome in achieving their objectives. Under Executive Order 12866 (''Regulatory Planning and Review''), a determination must be made whether a regulatory action is significant and therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. This rule was determined to be a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive Order).

This rule formalizes the longstanding interpretation of the Fair Housing Act to include discriminatory effects liability, and establishes uniform, clear standards for determining whether a practice that has a discriminatory effect is in violation of the Fair Housing Act, regardless of whether the practice was adopted with intent to discriminate. As stated in the Executive Summary, the need for this rule arises because, although all federal courts of appeals that have considered the issue agree that Fair Housing Act liability may be based solely on discriminatory effects, there is a small degree of variation in the methodology of proof for a claim of effects liability. As has been discussed in the preamble to this rule, in establishing such standards HUD is exercising its rulemaking authority to bring uniformity, clarity, and certainty to an area of the law that has been approached by HUD and federal courts across the nation in generally the same way, but with minor variations in the allocation of the burdens of proof.[151] A uniform rule would simplify compliance with the Fair Housing Act's discriminatory effects standard, and decrease litigation associated with such claims. By providing certainty in this area to housing providers, lenders, municipalities, realtors, individuals engaged in housing transactions, and courts, this rule would reduce the burden associated with litigating discriminatory effect cases under the Fair Housing Act by clearly establishing which party has the burden of proof, and how such burdens are to be met. Additionally, HUD believes the rule may even help to minimize litigation in this area by establishing uniform standards. With a uniform standard, entities are more likely to conduct self-testing and check that their practices comply with the Fair Housing Act, thus reducing their liability and the risk of litigation. A uniform standard is also a benefit for entities operating in multiple jurisdictions. Also, legal and regulatory clarity generally serves to reduce litigation because it is clearer what each party's rights and responsibilities are, whereas lack of consistency and clarity generally serves to increase litigation. For example, once disputes around the court-defined standards are eliminated by this rule, non-meritorious cases that cannot meet the burden under § 100.500(c)(1) are likely not to be brought in the first place, and a respondent or defendant that cannot meet the burden under § 100.500(c)(2) may be more inclined to settle at the pre-litigation stage.

Accordingly, while this rule is a significant regulatory action under Executive Order 12866 in that it establishes, for the first time in regulation, uniform standards for determining whether a housing action or policy has a discriminatory effect on a protected group, it is not an economically significant regulatory action. The burden reduction that HUD believes will be achieved through uniform standards will not reach an annual impact on the economy of $100 million or more, because HUD's approach is not a significant departure from HUD's interpretation to date or that of the majority of federal courts. Although the burden reduction provided by this rule will not result in economically significant impact on the economy, it nevertheless provides some burden reduction through the uniformity and clarity presented by HUD's standards promulgated through this final rule and is therefore consistent with Executive Order 13563.

The docket file is available for public inspection in the Regulations Division, Office of the General Counsel, Room 10276, 451 7th Street SW., Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires

[151] *See, e.g.,* the extensive discussion of the various options in *Graoch,* 508 F.3d at 371–375.

an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. For the reasons stated earlier in this preamble in response to public comment on the issue of undue burden on small entities, and discussed here, HUD certifies that this rule will not have significant economic impact on a substantial number of small entities.

It has long been the position of HUD, confirmed by federal courts, that practices with discriminatory effects may violate the Fair Housing Act. As noted in the preamble to the proposed rule (76 FR 70921) and this preamble to the final rule, this long-standing interpretation has been supported by HUD policy documents issued over the last decades, is consistent with the position of other Executive Branch agencies, and has been adopted and applied by every federal court of appeals to have reached the question. Given, however, the variation in how the courts and even HUD's own ALJs have applied that standard, this final rule provides for consistency and uniformity in this area, and hence predictability, and will therefore reduce the burden for all seeking to comply with the Fair Housing Act. Furthermore, HUD presumes that given the over 40-year history of the Fair Housing Act, the majority of entities, large or small, currently comply and will remain in compliance with the Fair Housing Act. For the minority of entities that have, in the over 40 years of the Fair Housing Act's existence, failed to institutionalize methods to avoid engaging in illegal housing discrimination and plan to come into compliance as a result of this rulemaking, the costs will simply be the costs of compliance with a preexisting statute. The rule does not change that substantive obligation; it merely sets it forth in a regulation. While this rule provides uniformity as to specifics such as burden of proof, HUD's rule does not alter the substantive prohibitions against discrimination in fair housing law, which were established by statute and developed over time by administrative and federal court case law. Any burden on small entities is simply incidental to the pre-existing requirements to comply with this body of law. Accordingly, the undersigned certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This final rule sets forth nondiscrimination standards. Accordingly, under 24 CFR 50.19(c)(3), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either: (i) Imposes substantial direct compliance costs on state and local governments and is not required by statute, or (ii) preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This final rule does not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects in 24 CFR Part 100

Civil rights, Fair housing, Individuals with disabilities, Mortgages, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, HUD amends 24 CFR part 100 as follows:

PART 100—DISCRIMINATORY CONDUCT UNDER THE FAIR HOUSING ACT

■ 1. The authority citation for 24 CFR part 100 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3600–3620.

Subpart A—General

■ 2. In § 100.5, add the following sentence at the end of paragraph (b):

§ 100.5 Scope.

* * * * *

(b) * * * The illustrations of unlawful housing discrimination in this part may be established by a practice's discriminatory effect, even if not motivated by discriminatory intent, consistent with the standards outlined in § 100.500.

* * * * *

Subpart B—Discriminatory Housing Practices

■ 3. In § 100.70, add new paragraph (d)(5) to read as follows:

§ 100.70 Other prohibited conduct.

* * * * *

(d) * * *

(5) Enacting or implementing land-use rules, ordinances, policies, or procedures that restrict or deny housing opportunities or otherwise make unavailable or deny dwellings to persons because of race, color, religion, sex, handicap, familial status, or national origin.

Subpart C—Discrimination in Residential Real Estate-Related Transactions

■ 4. In § 100.120, revise paragraph (b) to read as follows:

§ 100.120 Discrimination in the making of loans and in the provision of other financial assistance.

* * * * *

(b) Practices prohibited under this section in connection with a residential real estate-related transaction include, but are not limited to:

(1) Failing or refusing to provide to any person information regarding the availability of loans or other financial assistance, application requirements, procedures or standards for the review and approval of loans or financial assistance, or providing information which is inaccurate or different from that provided others, because of race, color, religion, sex, handicap, familial status, or national origin.

(2) Providing, failing to provide, or discouraging the receipt of loans or other financial assistance in a manner that discriminates in their denial rate or otherwise discriminates in their availability because of race, color, religion, sex, handicap, familial status, or national origin.

■ 5. In § 100.130, revise paragraph (b)(2) and add new paragraph (b)(3) to read as follows:

§ 100.130 Discrimination in the terms and conditions for making available loans or other financial assistance.

* * * * *

(b) * * *

(2) Determining the type of loan or other financial assistance to be provided with respect to a dwelling, or fixing the amount, interest rate, cost, duration or other terms or conditions for a loan or

other financial assistance for a dwelling or which is secured by residential real estate, because of race, color, religion, sex, handicap, familial status, or national origin.

(3) Servicing of loans or other financial assistance with respect to dwellings in a manner that discriminates, or servicing of loans or other financial assistance which are secured by residential real estate in a manner that discriminates, or providing such loans or financial assistance with other terms or conditions that discriminate, because of race, color, religion, sex, handicap, familial status, or national origin.

■ 6. In part 100, add a new subpart G to read as follows:

Subpart G—Discriminatory Effect

§ 100.500 Discriminatory effect prohibited.

Liability may be established under the Fair Housing Act based on a practice's discriminatory effect, as defined in paragraph (a) of this section, even if the practice was not motivated by a discriminatory intent. The practice may still be lawful if supported by a legally sufficient justification, as defined in paragraph (b) of this section. The burdens of proof for establishing a violation under this subpart are set forth in paragraph (c) of this section.

(a) *Discriminatory effect.* A practice has a discriminatory effect where it actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status, or national origin.

(b) *Legally sufficient justification.* (1) A legally sufficient justification exists where the challenged practice:

(i) Is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent, with respect to claims brought under 42 U.S.C. 3612, or defendant, with respect to claims brought under 42 U.S.C. 3613 or 3614; and

(ii) Those interests could not be served by another practice that has a less discriminatory effect.

(2) A legally sufficient justification must be supported by evidence and may not be hypothetical or speculative. The burdens of proof for establishing each of the two elements of a legally sufficient justification are set forth in paragraphs (c)(2) and (c)(3) of this section.

(c) *Burdens of proof in discriminatory effects cases.* (1) The charging party, with respect to a claim brought under 42 U.S.C. 3612, or the plaintiff, with respect to a claim brought under 42 U.S.C. 3613 or 3614, has the burden of proving that a challenged practice caused or predictably will cause a discriminatory effect.

(2) Once the charging party or plaintiff satisfies the burden of proof set forth in paragraph (c)(1) of this section, the respondent or defendant has the burden of proving that the challenged practice is necessary to achieve one or more substantial, legitimate, nondiscriminatory interests of the respondent or defendant.

(3) If the respondent or defendant satisfies the burden of proof set forth in paragraph (c)(2) of this section, the charging party or plaintiff may still prevail upon proving that the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect.

(d) *Relationship to discriminatory intent.* A demonstration that a practice is supported by a legally sufficient justification, as defined in paragraph (b) of this section, may not be used as a defense against a claim of intentional discrimination.

Dated: February 8, 2013.

John Trasviña,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 2013–03375 Filed 2–14–13; 8:45 am]

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Part V

Bureau of Consumer Financial Protection

12 CFR Part 1070
Disclosure of Records and Information; Final Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1070

[Docket No. CFPB–2011–0003]

RIN 3170–AA01

Disclosure of Records and Information

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule.

SUMMARY: This final rule establishes procedures for the public to obtain information from the Bureau of Consumer Financial Protection, under the Freedom of Information Act, the Privacy Act of 1974, and in legal proceedings. This final rule also establishes the Bureau's rule regarding the confidential treatment of information obtained from persons in connection with the exercise of its authorities under Federal consumer financial law.

DATES: This final rule is effective March 18, 2013.

FOR FURTHER INFORMATION CONTACT: Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, 202–435–7275.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, the President signed into law the Dodd–Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, codified at 12 U.S.C. 5301 *et seq.*) (the Dodd-Frank Act). Title X of the Dodd-Frank Act created the Bureau of Consumer Financial Protection (the Bureau or the CFPB). Pursuant to the provisions of the Dodd-Frank Act, the Bureau began to exercise its authority to regulate the offering and provision of consumer financial products and services under Federal consumer financial law on July 21, 2011.[1]

In order to establish procedures to facilitate public interaction with the Bureau, the Bureau published an interim final rule on July 28, 2011, 76 FR 45371 (Jul. 28, 2011), and solicited public comment on that rule. The Bureau is issuing this final rule in response to these comments as well as to clarify and correct certain aspects of the interim final rule.

II. Summary of the Final Rule

The final rule consists of five subparts.

Subpart A of the final rule consists largely of definitions of terms that are used throughout the remainder of the part.

Subpart B of the final rule implements the Freedom of Information Act, 5 U.S.C. 552 (the FOIA). The FOIA grants the public an enforceable right to obtain access to or copies of Federal agency records unless disclosure of those records, or information contained within them, is exempt from disclosure pursuant to one or more statutory exemptions and exclusions. The FOIA also requires Federal agencies to routinely publish in the **Federal Register**, or make available to the public, certain information concerning their organizational structures, policies and procedures, final opinions and orders, and records that have or are likely to become the objects of frequent FOIA requests. The regulations in this subpart implement the FOIA as required or authorized by various provisions of the statute.

The Bureau modeled its FOIA rule upon regulations promulgated by the other Federal agencies, including the U.S. Department of the Treasury. In drafting the rule, the Bureau sought the input of the Department of Justice and the National Archives and Records Administration's Office of Government Information Services, which is responsible for promoting best practices among Federal agencies as to their FOIA regulations and practices.

Subpart C of the final rule sets forth procedures for serving the Bureau and its employees with copies of documents in connection with legal proceedings, such as summonses, complaints, subpoenas, and other litigation-related requests or demands for the Bureau's records or official information. Subpart C also describes the Bureau's procedures for considering such requests or demands for official information. These regulations (which are sometimes referred to as *Touhy* regulations) are modeled after similar regulations of other Federal agencies.

Subpart D of the rule pertains to the protection and disclosure of confidential information that the Bureau generates and receives during the course of its work. Various provisions of the Dodd-Frank Act require the Bureau to promulgate regulations providing for the confidentiality of certain types of information and protecting such information from public disclosure. Other provisions of the Dodd-Frank Act, however, require or authorize the Bureau to share information, under certain circumstances, with other Federal and State agencies to the extent that they share jurisdiction with the Bureau as to the supervision of financial institutions, the enforcement of consumer financial protection laws, or the investigation and resolution of consumer complaints regarding financial institutions or consumer financial products and services. In implementing these provisions, the Bureau has sought to provide the maximum protection for confidential information, while ensuring its ability to share or disclose information to the extent necessary to achieve its mission.

The Bureau recognizes that much of the information that it will generate and obtain during the course of its activities will be commercially, competitively, and personally sensitive in nature, and generally warrants heightened protection. The need for greater protection for these categories of information is reflected in the substantive law of privilege and in various statutes, including the FOIA and the Privacy Act of 1974, 5 U.S.C. 552a (the Privacy Act), that provide for the protection of such information from disclosure.

Notwithstanding these concerns, there are instances in which the disclosure of confidential information will be necessary or appropriate for the Bureau to accomplish its statutory mission, such as the investigation and resolution of consumer complaints or the enforcement of Federal consumer financial laws. Disclosures may also serve the public interest where Federal and State agencies share elements of the Bureau's mission and where, by sharing information, they can do their jobs more effectively.

The regulations in subpart D balance these competing concerns by generally prohibiting the Bureau and its employees from disclosing confidential information to non-employees, and even in certain cases to its employees, except in limited circumstances. Even where the Bureau permits disclosures of confidential information, the Bureau imposes strict limits upon the further use and dissemination of disclosed information.

Where appropriate, the Bureau has based the regulations in this subpart upon regulations of the other Federal financial regulatory agencies that provide for the confidentiality and disclosure of certain information generated or received in the course of supervising, investigating, or pursuing enforcement actions against financial institutions.

[1] Pursuant to section 1062 of the Dodd-Frank Act, 12 U.S.C. 5582, the Secretary of the Treasury designated July 21, 2011 as the ''transfer date'' on which various provisions of Title X of the Dodd-Frank Act became effective. 75 FR 57252.

Subpart E contains the Bureau's rule implementing the Privacy Act. The Privacy Act serves to balance the government's need to maintain information about individuals with the rights of individuals to be protected against unwarranted invasions of their privacy stemming from Federal agencies' collection, maintenance, use, and disclosure of personal information about them.

The regulations in this subpart establish procedures by which members of the public may request access to information or records that the Bureau maintains about them, request amendment or correction of such information or records, and request an accounting of disclosures of their records by the Bureau. As with its FOIA regulations, the Bureau modeled its Privacy Act regulations upon regulations promulgated by the other Federal agencies, including the Treasury Department.

III. Overview of Comments Received

In response to the interim final rule, the Bureau received thirteen comment letters. Seven of these comment letters were submitted on behalf of financial institution trade associations. Three letters were submitted on behalf of individual financial institutions and two letters were submitted on behalf of public interest groups. The Bureau also received one comment letter from an individual that did not pertain to the interim final rule.

Public interest groups, along with some of the financial services trade associations, wrote comments regarding subpart B of the Bureau's interim final rule, which implements the FOIA. Public interest group commenters propose minor modifications to the rule to facilitate public access to Bureau records. Several trade association commenters ask the Bureau to impose limitations on a rule that permits the Bureau to exercise its discretion to disclose information and records that are otherwise subject to FOIA exemptions.

Most of the comments that the Bureau received from both financial services trade associations and financial institutions concern subpart D of the interim final rule. Commenters express concerns as to whether and to what extent the Dodd-Frank Act authorizes the Bureau to promulgate regulations that permit it to disclose confidential information that it obtains from covered persons and service providers. They also argue that subpart D is too permissive in its criteria for disclosing such confidential information to other agencies, and in particular, to State attorneys general. The commenters propose that the Bureau adopt stricter criteria that certain other Federal financial regulatory agencies apply when determining whether to share confidential information.

The Bureau received no comments regarding subpart E of the interim final rule.

The Bureau also received one public comment that pertains to the Bureau's general authority to promulgate the interim final rule. Rather than address this comment in Section IV, it does so here.

The commenter argues that section 1066 of the Dodd-Frank Act did not authorize the Bureau to promulgate this interim final rule prior to the appointment of a director, at a time when, pursuant to section 1066 of the Dodd-Frank Act, the Treasury Secretary performed functions of the Bureau pending such an appointment.[2] The commenter argues that even if the Treasury Secretary had general authority to do so, pursuant to 31 U.S.C. 321(b)(1), the Secretary was bound to promulgate a rule that was entirely consistent with corresponding rules of the other prudential regulators.

This comment is moot insofar as the President has appointed a director of the Bureau who has authority to issue the rule pursuant to the statutes listed in § 1070.1 of this rule. Moreover, prior to this appointment, the Secretary of the Treasury had ample authority to issue the interim final rule under section 1066 of the Dodd-Frank Act as well as 31 U.S.C. 321. The Secretary was not obligated, when exercising such authority, to issue regulations related to confidential information that were identical to those issued by the prudential regulators.

In section IV below, the Bureau provides a section-by-section summary of the other comments it received to the interim final rule and the Bureau's responses to these comments.

IV. Section-by-Section Analysis

Subpart A—General Provisions and Definitions

Section 1070.01 Authority, Purpose, and Scope

Section 1070.1 of the interim final rule sets forth the Bureau's authorities for issuing the rule in this part, including provisions of the Dodd-Frank Act that require or authorize the Bureau to disclose, share, or maintain the confidentiality of certain information that the Bureau obtains from others or generates itself. Section 1070.1 also identifies the various purposes of the rule. The Bureau received no comments on the interim final rule. The Bureau adopts the interim final rule without modification.

Section 1070.2 General Definitions

Section 1070.2 defines terms that are utilized elsewhere in part 1070 of the rule. For example, § 1070.2(e) of the interim final rule defines the term ''civil investigative demand material'' to encompass all types of materials provided to the Bureau in response to a civil investigative demand that the Bureau issues in accordance with section 1052 of the Dodd-Frank Act. The definition of this term also includes materials that a person provides to the Bureau voluntarily or in lieu of receiving a civil investigative demand.

Section 1070.2(f) defines the term ''confidential information.'' Confidential information refers to three categories of non-public information—confidential consumer complaint information, confidential investigative information, and confidential supervisory information—that the Bureau, in subpart D, protects from various types of disclosure in accordance with the Dodd-Frank Act and other laws. The term also includes other Bureau information that is exempt from disclosure pursuant to one or more of the statutory exemptions to the FOIA.

Section 1070.2(g) defines ''confidential consumer complaint information'' to mean information that the Bureau receives from the public or from other agencies or organizations, or which the Bureau generates through its own efforts pursuant to sections 1013 and 1034 of the Dodd-Frank Act, that comprises or documents consumer complaints or inquiries concerning financial institutions or consumer financial products and services. The term includes information, such as personally identifiable information, that is protected from public disclosure under the FOIA.

Section 1070.2(h) defines ''confidential investigative information'' to include all manner of materials received, generated, or compiled by the Bureau in the course of its investigative activities, including materials received through the issuance of civil investigative demands. It also includes confidential supervisory information and confidential consumer complaint information to the extent that such materials serve as a basis for or are utilized for purposes of an investigation. Lastly, the term includes materials that other Federal and State agencies provide to the Bureau or create for its use in

[2] 12 U.S.C. 5586.

investigating a possible violation of Federal consumer financial law.

Section 1070.2(i) defines ''confidential supervisory information'' to include various materials that the Bureau generates or receives that relate to the examination of financial institutions. These materials include, first, examination, inspection, visitation, operating, condition, and compliance reports, and any information contained in, relating to, or derived from such reports. Second, the term includes documentary materials, including reports of examination, which the Bureau prepares or that are prepared by others for use by the Bureau in exercising its supervisory authority over financial institutions, as well as information derived from such documentary materials. Third, the term includes the Bureau's communications with financial institutions and agencies to the extent that such communications relate to the exercise of the Bureau's supervisory authority over financial institutions. Fourth, confidential supervisory information includes information that financial institutions provide to the Bureau to help it to evaluate the risks associated with consumer financial products and services and whether institutions should be deemed ''covered persons,'' as that term is defined by section 1002(6) of the Dodd-Frank Act. Finally, the term includes other supervision-related information that is also exempt from public disclosure under the FOIA pursuant to 5 U.S.C. 552(b)(8).

The Bureau received no comments on the interim final rule. In the final rule, the Bureau adds a definition of the term ''State'' that incorporates the definition of that term set forth in section 1002(27) of the Dodd-Frank Act and which clarifies that the term also includes all political subdivisions of States. Furthermore, the Bureau modifies the definition of the term ''confidential supervisory information'' to clarify that it includes information provided to the CFPB by a financial institution to assess whether an institution is subject to the Bureau's supervisory authorities. The Bureau also modifies the definition of the term ''supervised financial institution'' to clarify that this term includes financial institutions that both are presently and may become subject to the Bureau's supervisory authority.

Section 1070.3 Custodian of Records; Certification; Alternative Authority

Section 1070.3 of the interim final rule designates the Chief Operating Officer of the Bureau to be the custodians of all Bureau records. Acting in this capacity, the Chief Operating Officer may certify the authenticity of any Bureau record or any copy of such record. The Chief Operating Officer may delegate his or her responsibilities as record custodian to other Bureau employees. The Bureau received no comments on the interim final rule. The Bureau adopts the interim final rule without modification.

Section 1070.4 Records of the CFPB Not To Be Otherwise Disclosed

Section 1070.4 of the interim final rule states that except as provided in this part, employees or former employees of the Bureau, or others in possession of a record of the Bureau that the Bureau has not already made public, are prohibited from disclosing such records, without authorization, to any person who is not an employee of the Bureau. The Bureau received no comments on the interim final rule. The Bureau adopts the interim final rule without modification.

Subpart B—Freedom of Information Act

Section 1070.10 General

Section 1070.10 introduces subpart B as consisting of regulations that implement the FOIA by setting forth procedures for requesting access to Bureau records. The rule also instructs the public to read subpart B together with the FOIA, the 1987 Office of Management and Budget Guidelines for FOIA Fees, the Bureau's Privacy Act regulations set forth in subpart E, and the FOIA page on the Bureau's Web site, *http://www.consumerfinance.gov*, because such materials offer important guidance on the topics that subpart B governs.

A trade association commenter argues that the Bureau should amend § 1070.10 to delete the phrase ''[t]hese regulations should be read together with,'' which immediately precedes ''the FOIA, the 1987 Office of Management and Budget Guidelines for FOIA Fees, the Bureau's Privacy Act regulations set forth in subpart * * *'' and the phrase ''which'' prior to ''provide additional information about this topic.'' The commenter argues that these phrases seemingly enable the Bureau to alter subpart B at will simply by specifying a contrary rule on its FOIA Web page. The commenter proposes that the rule simply state that the FOIA, the OMB Guidelines, the Privacy Act regulations, and the Bureau's FOIA Web page, provide additional information about this topic.

The Bureau disagrees with the commenter that § 1070.10 requires modification. As written, the rule makes clear that the public should consult the FOIA Web site, along with the other authorities cited, because they ''provide additional information on this topic.''

The Bureau does not intend to utilize its FOIA Web page to effect substantive revisions to subpart B and it does not interpret § 1070.10 to be a source of authority to do so. The FOIA Web page exists to summarize and provide public guidance as to the FOIA and the procedures set forth in the Bureau's regulations that implement the FOIA. In certain cases, such guidance may indicate how the Bureau interprets its FOIA regulations, but it will not alter or supplant such regulations.

Section 1070.11 Information Made Available; Discretionary Disclosures

Section 1070.11(a) of the interim final rule sets forth the three major categories of information that the FOIA requires the Bureau to publish or make accessible to the public. Paragraph (b) authorizes the Bureau, in response to a FOIA request, to make discretionary disclosures of information or records that are otherwise subject to non-mandatory FOIA exemptions. Paragraph (c) requires the Bureau to make publicly available all records that have become the subject of three or more requests or that are likely to become the subject of frequent requests because they are clearly of interest to the public at large.

Several trade associations expressed concerns that § 1070.11(b) does not specify who in the Bureau is responsible for making discretionary disclosures of Bureau records and what criteria this person will employ when doing so. One commenter argues that this provision should provide for notice and a means to contest a decision of the Bureau to make discretionary disclosures of information. Another commenter argues that this provision should clarify that the Bureau may not make discretionary disclosures of examination reports or confidential commercial information.

Commenters differ in their reactions to § 1071.11(c). Several commenters argue that the three-request publication threshold is too rigid and is easily manipulated to induce publication. One commenter argues that the Bureau should eliminate this provision in favor of a case-by-case approach to publishing frequently requested records. Another commenter suggests that the Bureau should publish records only when they are frequently and regularly requested by a broad range of requestors. Yet another commenter argues that the Bureau should revise the rule to allow for publication of frequently requested records regardless of whether they are ''clearly of interest to the public at large.''

The Bureau adopts § 1070.11(b) of the interim final rule without modification. This provision, which permits the Chief FOIA Officer to disclose FOIA exempt information ''if not precluded by law,'' [3] is a common provision that exists in the FOIA regulations of many Federal agencies.[4] This provision merely permits the Chief FOIA Officer to exercise the Bureau's discretion—to the extent that such discretion exists under law—to disclose information notwithstanding the fact that the Bureau could withhold such information pursuant to one or more of the FOIA exemptions. However, this provision does not grant the Chief FOIA Officer discretion to disregard Federal laws that require the Bureau to withhold information from public disclosure.

For example, § 1070.11(b) permits the Chief FOIA Officer to make public information that is subject only to FOIA Exemption 5, 5 U.S.C. 552(b)(5), as long as no other Federal law prohibits the Bureau from disclosing such information. However, the Chief FOIA Officer lacks discretion to disclose a trade secret that is subject to FOIA Exemption 4, 5 U.S.C. 552(b)(4), to the extent that the Trade Secrets Act, 18 U.S.C. 1905, prohibits the Bureau from publicly disclosing the trade secret.[5] In certain instances, the Privacy Act also precludes the Chief FOIA Officer from disclosing information about individuals that is subject to FOIA Exemptions 6 or 7(c), 5 U.S.C. 552(b)(6), (7)(C).

To the extent that the Chief FOIA Officer has discretion to disclose confidential supervisory information that is otherwise subject to FOIA Exemption 8, 5 U.S.C. 552(b)(8), the Bureau's ''policy is to treat information obtained in the supervisory process as confidential and privileged'' and as ''exempt from disclosure under Exemption 8 of the Freedom of Information Act.'' CFPB Bulletin 12–01 (Jan. 4, 2012).

The Bureau adopts § 1070.11(c) of the interim final rule with minor modifications. Section 1070.11(c) implements the Electronic Freedom of Information Act amendments of 1996, codified at 5 U.S.C. 552(a)(2)(D), which require each agency to make ''available for public inspection and copying * * * copies of all records, regardless of form or format, which have been released to any person * * * and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records.'' The Department of Justice, in guidance it issued to Federal agencies in 2003, interprets section (a)(2)(D) of the FOIA to mean that agencies must publish records that are already or are likely to become the subject of three or more FOIA requests. *See* Department of Justice, Office of Information & Privacy, FOIA Post: ''FOIA Counselor Q&A: 'Frequently Requested' Records'' (Jul. 25, 2003), at *http://www.justice.gov/oip/foiapost/2003foiapost28.htm*. Section 1070.11(c) is consistent with this guidance and with similar provisions in other agencies' FOIA regulations.[6]

Nevertheless, the Bureau agrees to remove from § 1070.11(c) the qualifying language ''clearly of interest to the public at large.'' Such language is not part of the FOIA or the Department of Justice's FOIA guidance. The Bureau concludes that this language does not serve the Bureau's interest in promoting transparency.

Section 1070.12 Publication in the **Federal Register**

Section 1070.12 implements section (a)(1) of the FOIA, 5 U.S.C. 552(a)(1). It requires the Bureau to publish in the **Federal Register** certain details of its organization, policies, procedures, and rules, subject to the FOIA exemptions. The Bureau received no comments on the interim final rule. The Bureau adopts the interim final rule without modification.

Section 1070.13 Public Inspection and Copying

Section 1070.12(a) implements section (a)(2) of the FOIA, 5 U.S.C. 552(a)(2). Subject to the FOIA exemptions, it requires the Bureau to make available for public inspection and copying, including by posting on the Bureau's Web page, all of the Bureau's final opinions and orders, certain statements of its policies and administrative staff manuals, copies of all frequently requested records that it publishes pursuant to § 1070.11(c), and an index of such records.

Section 1070.12(b) requires the Bureau to establish an electronic FOIA reading room on its Web site to house the records that section 1070.12(a) requires it to publish. Section 1070.12(c) requires the Bureau to also make such records available at its headquarters in a physical reading room that is accessible to the public upon request.

The Bureau received no comments on the interim final rule. The Bureau adopts the interim final rule without modification, except that it updates the address of the reading room to reflect the new address of the Bureau: 1700 G Street NW., Washington, DC 20552.

Section 1070.14 Requests for CFPB Records

Section 1070.14 sets forth the basic procedural requirements for submitting a FOIA request to the Bureau.

Paragraph (a) implements section (a)(3) of the FOIA, 5 U.S.C. 552(a)(3), which establishes the basic public right to obtain access to Federal agency records, upon request, and subject to the FOIA exemptions and exclusions.

Paragraph (b) sets forth the acceptable formats for a Bureau FOIA request. It states that a FOIA request must be made in writing, labeled as such, and submitted to the Chief FOIA Officer in either paper or electronic formats.

Paragraph (c) describes the required content of a Bureau FOIA request. This content includes a reasonably specific description of the records requested, contact information for the requester, a statement of whether the requester wants to inspect or obtain a copy of the records requested, an assertion of the requester's applicable fee category, an indication of whether the requester seeks an upper limit to or a waiver or reduction of applicable fees, and an indication of whether the requester seeks expedited processing of the request.

Paragraph (d) states that the Bureau need not accept or process a FOIA request, or be bound by deadlines for responding to such a request, that does not conform to the requirements of paragraphs (b) and (c). If a request is materially deficient, then the Bureau may return it to the requester and advise the requester as to how to address the deficiency. If the requester does not

[3] Section 1070.15(b) of these rules authorizes the Bureau's Chief FOIA Officer to grant or deny all FOIA requests for Bureau records. This authority includes the power to make discretionary disclosures of information or records that are subject to FOIA requests, as set forth in section 1070.11(b). The Chief FOIA Officer exercises this authority with the input and advice of the program offices that maintain the requested information. To the extent that a business submits trade secrets or confidential commercial information to the Bureau that later becomes subject to a FOIA request, section 1070.20 of these rules requires the Chief FOIA Officer, in most cases, to obtain the input of that business before the Chief FOIA Officer decides whether to disclose the information.

[4] *See, e.g.,* 12 CFR 261.14(c) (Federal Reserve Board regulation providing for discretionary release of exempt information); 12 CFR 4.12(c) (Office of Comptroller of Currency regulation providing for the same discretionary release of exempt information).

[5] The Trade Secrets Act prohibits agencies from disclosing trade secrets except where they are authorized by law to do so. *See Chrysler Corp.* v. *Brown,* 441 U.S. 281 (1979).

[6] *See, e.g.,* 12 CFR 261.11(4) (Federal Reserve Board rule providing for the publication of frequently requested records); 12 CFR 309.4(D) (Federal Deposit Insurance Corporation rule providing for the publication of frequently requested records).

respond to notification of a material deficiency within thirty (30) days, then the Bureau will deem the deficient request to be withdrawn. A determination that a request is materially deficient does not constitute a denial of access and is not subject to appeal.

Paragraphs (e) and (f) set forth the procedure by which a requester may obtain access to Bureau records about him or herself or about another individual when requesting records on behalf of that individual.

One commenter believes that the Bureau should amend § 1070.14(c)(5), which requires FOIA requesters to seek fee waivers at the time when they file their FOIA requests, to allow requesters to seek fee waivers at any time while FOIA requests are open.

Another commenter argues that the Bureau should eliminate the portion of § 1070.14(c)(5) which states that by submitting a FOIA request, the requester agrees to pay any and all fees associated with processing the request up to $25. The commenter argues that this requirement may deter individuals from seeking information pursuant to the FOIA. Instead, the commenter argues that requesters should be able to specify that they do not want the Bureau to process the request if doing so will exceed the two free search hours and 100 free pages of duplication to which the FOIA entitles them.

Finally, one commenter argues that the Bureau should revise § 1070.14(d) to state that the failure by a requester to adhere to all of these procedural requirements—including the requirements that requests must be labeled ''Freedom of Information Act Request'' and that requesters specify an applicable fee category—will not necessarily result in the Bureau rejecting a request. The commenter also argues that this provision should require the Bureau to inform requesters when they have deemed requests to be deficient.

The Bureau modifies § 1070.14(b) of the interim final rule to reflect the new mailing address of the Bureau: 1700 G Street NW., Washington, DC 20552. The Bureau also modifies § 1070.14(c)(2) to require that a requester include his, her, or its name in addition to the other contact information that the Bureau requires a requester to provide. The Bureau imposes this change to ensure that it can make proper fee category determinations, impose fees upon the requester, and properly determine whether a request is a Privacy Act or a FOIA request.

The Bureau adopts § 1070.14(c)(5) without modification for the reasons that it discusses in the portion of the section-by-section analysis that pertains to § 1070.22 of the rule.

To address the commenter's concern that paragraph (d) authorizes the Bureau to reject requests on the basis of immaterial deficiencies, and does not require the Bureau to advise requesters as to how to correct deficiencies in their requests, the Bureau modifies § 1070.14(d) to state that it will deem itself to have received a request when it contains ''substantially'' all of the information that the Bureau requires and that it need not accept or process a request that fails to conform in any ''material'' respect to the requirements of § 1070.14.

Section 1070.15 Responsibility For Responding to Requests for CFPB Records

Section 1070.15(a) states that the Bureau will deem records to be responsive to a FOIA request only to the extent that it possesses them as of the date when the Bureau commences its records search.

Paragraph (b) states that the Bureau's Chief FOIA Officer is authorized to make determinations on behalf of the Bureau as to whether and to what extent to grant FOIA requests.

Paragraph (c) sets forth the Bureau's procedures for consulting with or referring to another agency a requested record that originated with or contains information that originated with that agency.

Paragraph (d) states that the Bureau will notify a requester whenever it refers all or part of a request to another agency.

One commenter urges the Bureau to amend § 1070.15(c), which authorizes the Bureau to consult other agencies when responding to requests for Bureau records that comprise other agencies' information, to require the Bureau to obtain the affirmative consent of such agencies, rather than merely consulting them, prior to releasing the records.

The Bureau adopts the interim final rule without modification. The interim final rule reflects the standard practice among Federal agencies for consultations. It represents sound practice in that it balances the interests of other agencies with the right of requesters to obtain requested records in a timely fashion.

Section 1070.16 Timing of Responses to Requests for CFPB Records

Section 1070.16 sets forth the order and timing of the Bureau's responses to FOIA requests.

Paragraph (a) states that, except as set forth in paragraphs (b) through (d) of this section and § 1070.17 of this subpart, the Bureau will respond to FOIA requests in the order of their receipt.

Paragraph (b) authorizes the Bureau to establish separate tracks to process simple and complex requests in the order of their respective receipt. This multi-track process allows the Bureau to respond to simple requests more quickly than it could otherwise if the Bureau processed such simple requests in a single queue behind complex requests.

Paragraph (c) establishes a twenty (20) business day deadline for the Bureau to respond to a FOIA request. The Bureau may toll this deadline once while it awaits a requester's response to a reasonable demand for clarification of a request. It may also toll the deadline while it is engaged in a dispute with a requester regarding the assessment of fees.

Paragraph (d) permits the Bureau to unilaterally extend in writing the twenty (20) business day response deadline for responding to a FOIA request or appeal by up to an additional ten (10) business days if the Bureau determines that unusual circumstances exist that preclude the Bureau from meeting the twenty (20) business day deadline. If the Bureau determines that it needs more than an additional ten (10) business days to respond, then it must notify the requester and provide the requester with an opportunity to either narrow the scope of the request or appeal in such a way that the Bureau can respond by the deadline or arrange for an alternative time frame beyond the deadline to respond to the request or appeal.

One commenter argues that § 1070.16(c) impermissibly authorizes the Bureau to toll the twenty (20) day deadline for responding to FOIA requests while the Bureau awaits clarification from a requester as to subject matter of a request or while the Bureau resolves any dispute with the requester regarding fees. The commenter argues that the FOIA states that the request response deadline commences once a request or appeal has been received.

The Bureau adopts the interim final rule without modification. The interim final rule implements section (a)(6)(A) of the FOIA, 5 U.S.C. 552(a)(6)(A), which provides that an agency may toll the response deadline once while awaiting the requester's response to a reasonable request of the agency for information about a FOIA request or as necessary while awaiting the requester's clarification of fee issues regarding the FOIA request.

Section 1070.17 Requests for Expedited Processing

Section 1070.17 establishes a procedure by which FOIA requesters may seek and the criteria by which the Bureau will grant expedited processing of FOIA requests.

Paragraph (a) states that the Bureau will grant expedited processing to requesters that demonstrate a ''compelling need'' for such processing in accordance with this section.

Paragraph (b) sets forth the form and content of requests for expedited processing and defines the term ''compelling need'' generally and with respect to requests made by persons primarily engaged in disseminating information.

Paragraph (c) requires the Bureau to respond to requests for expedited processing within ten (10) calendar dates of their receipt.

Paragraph (d) states that if granted, expedited processing entitles requesters to priority over non-expedited requests and responses as soon as practicable. It further states that the Bureau may process expedited requests on a multi-track basis and within each track, in the order of their receipt.

Paragraph (e) establishes the rights of requesters to appeal denials of requests for expedited processing in accordance with § 1070.21 of this subpart.

One commenter suggests that the Bureau should amend § 1070.17 by expanding its criteria for granting expedited processing of FOIA requests to include, in addition to instances where the requester demonstrates a ''compelling need'' for expedited process, ''other cases determined by the agency,'' which section (a)(6)(E)(i)(II) of the FOIA, 5 U.S.C. (a)(6)(E)(i)(II), authorizes. The commenter asks that these ''other cases'' include instances in which expedited processing is necessary to avoid the loss of substantial due process rights or where there is widespread and exceptional media interest in information that raises concerns about the government's integrity.

The Bureau agrees with the commenter that the FOIA grants agencies discretion to process requests on an expedited basis for reasons other than demonstration by a requester of a compelling need. The Bureau modifies the interim final rule by permitting the Bureau to process a request for expedited processing whenever a requester demonstrates a compelling need ''or in other cases that the CFPB deems appropriate.''

Section 1070.18 Responses to Requests for CFPB Records

Section 1070.18 sets forth the process by which the Bureau will acknowledge receipt of FOIA requests and communicate its initial determinations as to whether and to what extent to grant such requests. The rule also delineates information that the Bureau must include in notifications to requesters that acknowledge receipt of or determine whether and to what extent to grant FOIA requests. The Bureau received no comments on the interim final rule. The Bureau adopts the interim final rule without modification.

Section 1070.19 Classified Information

Section 1070.19 sets forth a procedure for referring requests for classified information to the agency that originated or classified it. The Bureau received no comments on the interim final rule. The Bureau adopts the interim final rule without modification.

Section 1070.20 Requests for Business Information Provided to the CFPB

Section 1070.20 requires the Bureau, under certain circumstances, to notify persons or entities that submit business information to the Bureau of its receipt of a FOIA request or appeal for such information, and to provide submitters with an opportunity to object to the Bureau's disclosure of such information on the basis of FOIA Exemption 4, 5 U.S.C. 552(b)(4). If the Bureau rejects such objections, then the rule requires the Bureau to wait a certain period of time before it discloses the information so as to afford submitters an opportunity to file suit in Federal district court to enjoin disclosure. The rule states that the Bureau will notify submitters of the receipt of FOIA requests or appeals for their information whenever the Bureau has reason to believe that the information may be subject to Exemption 4 or that submitters have marked the information as such in good faith. Notification is not required if the Bureau determines independently that the requested information is exempt from disclosure, that it is already in the public domain, that disclosure is required by statute or regulation, or the submitter's designation of the information as being subject to Exemption 4 is obviously frivolous.

Several commenters argue that the Bureau should eliminate or amend § 1070.20(c), which allows submitters of business information to designate such information as being subject to FOIA Exemption 4 for a period of ten years after the date of submission. Several commenters argue that the Bureau should double or otherwise increase the ten year time period applicable to designations of trade secrets and other confidential supervisory information.

The Bureau adopts the interim final rule without modification. The ten-year length of the business information designation period is consistent with similar rules adopted by other Federal agencies. The Bureau notes that the rule grants it discretion, upon request and with sufficient justification, to extend the length of the designation period beyond ten years. As such, the Bureau sees no reason to eliminate or extend the default length of the designation period.

Section 1070.21 Administrative Appeals

Section 1070.21 discusses administrative appeals of initial Bureau determinations regarding FOIA requests.

Paragraph (a) enumerates Bureau determinations that are subject to administrative appeal. These determinations include denial of access to records in whole or in part, assignment to the requester of a particular fee category, denial of a request for a reduction or waiver of fees, a determination that no records exist that are responsive to a request, and denial of a request for expedited processing.

Paragraph (b) establishes a forty-five (45) calendar day time frame from the date of initial determination to file administrative FOIA appeals (except for appeals of denials of expedited processing, which must be filed within ten (10) days).

Paragraph (c) sets forth the required form and content of administrative appeals.

Paragraph (d) sets forth a procedure for acknowledging the receipt of administrative appeals.

Paragraph (e) authorizes the General Counsel of the Bureau to decide whether to affirm or overturn initial determinations of the Bureau which are subject to administrative appeals. The rule requires the General Counsel to respond to appeals within twenty (20) business days after their receipt, unless that time period is extended pursuant to § 1070.16(d) of this subpart. It requires the General Counsel to notify requesters in writing of appellate determinations and, if the appeals are denied, to inform requesters of their rights to seek redress in Federal district court.

Paragraph (g) notes that an appeal ordinarily will not be adjudicated if a FOIA request becomes a matter of FOIA litigation.

One commenter suggests that the Bureau should amend § 1070.21(b), which sets forth a 45-day time limit to file a FOIA appeal that runs from the later of the date of the Bureau's decision to deny or grant the request or the date of the letter transmitting the last records released to the requester. The commenter argues that this provision should state instead that this 45-day time period should run from the later of the date of the Bureau's initial determination or the date that the last records are received by (rather than mailed to) the requester.

The Bureau declines to adopt the commenter's suggestion regarding paragraph (b) because the Bureau would have no way to know, for purposes of determining whether a requester has met the appellate filing deadline, when a requester actually receives the records it transmits. The Bureau believes that a more reliable basis for computing the appellate deadline is the date of the Bureau's transmission of such records.

The Bureau modifies § 1070.21 to add a new paragraph (e)(3) that authorizes the General Counsel, in deciding FOIA appeals, to remand FOIA requests to the Chief FOIA Officer for such further action as the General Counsel directs, including but not limited to new or modified record searches. Actions of the Chief FOIA Officer on remand will be treated once again as initial determinations of the Bureau that are subject to the regular procedures set forth in this subpart for the Bureau to process, decide, and respond to FOIA requests. For example, the Chief FOIA Officer must respond to a remanded request in accordance with the deadlines set forth in § 1070.16, which will run from the date of the Bureau's transmission of the remand notification. If a requester disagrees with the actions of the Chief FOIA Officer on remand, then the requester may file an administrative appeal of those actions in accordance with § 1070.21.

Section 1070.22 Fees for Processing Requests for CFPB Records

Section 1070.22 sets forth the criteria that the Bureau will use to determine whether and to what extent the Bureau may assess fees in connection with processing and responding to FOIA requests and appeals.

Paragraph (a) generally describes the applicable procedure for determining whether and to what extent to assess fees to a FOIA request. It also identifies a schedule of fees assessable for time spent by Bureau employees searching for and reviewing requested records and for duplicating such records for production to a requester.

Paragraph (b) describes the various categories that the Bureau will assign to each requester for the purpose of determining which types of fees apply to a request.

Paragraph (c) describes the types of fees that apply to each of the categories of fee requesters set forth in paragraph (b).

Paragraph (d) describes circumstances where the Bureau will not charge fees to requesters.

Paragraph (e) sets forth the procedure by which FOIA requesters may seek, and the criteria that the Bureau will use to determine whether to grant requests for, waivers of or reductions in applicable fees.

Paragraph (f) identifies circumstances in which the Bureau requires FOIA requesters to pre-pay fees associated with FOIA requests and in which the Bureau shall charge interest on and collect overdue fees.

One comment argues that the Bureau's FOIA fee schedule, which the Bureau references in § 1070.22(a)(1) and posts on its FOIA Web site, must go through the Administrative Procedure Act's notice and comment process.

Another comment urges the Bureau to amend § 1070.22(d)(3) to waive FOIA duplication fees for representatives of the news media in the event that the Bureau fails to comply with time limits applicable to FOIA requests.

A commenter urges the Bureau to modify § 1070.22(e) to permit requesters to seek waivers of or reductions in applicable fees at any time prior to the Bureau's response date.

Finally, a comment suggests that the Bureau should limit the circumstances under which it requires prepayment of FOIA fees pursuant to § 1070.22(f). This comment argues that requesters should not have to pay outstanding fees associated with their prior FOIA requests before the Bureau will process new requests that they submit because the FOIA entitles all requesters to a certain amount of free search time and duplication of records.

The Bureau disagrees with the comment that the Bureau's schedule of FOIA fees, which the Bureau has published on its FOIA Web page since it promulgated the interim final rule, requires further notice and comment. This fee schedule, like the rest of the interim final rule, was subject to public comment, as the CPFB referenced the schedule in the rule. The Bureau received no public comments regarding this fee schedule.

The Bureau modifies § 1070.22(a) of the interim final rule so that it now states expressly—rather than merely referencing—the fee rates that the Bureau charges requesters to duplicate, search for, and review records. The Bureau also modifies this provision to clarify the circumstances under which the Bureau will charge fees when searching for electronic records.

The Bureau modifies § 1070.22(d)(3) of the interim final rule to provide, in accordance with section (a)(4)(a)(viii), that the Bureau shall not charge FOIA duplication fees for representatives of the news media in the event that the Bureau fails to comply with time limits applicable to FOIA requests.

The Bureau declines to adopt the suggestion that it modify § 1070.22(e) so that requesters may seek waivers of or reductions in applicable fees at any time prior to the dates of the Bureau's responses to requests. By requiring requesters to state, at the time when they file their FOIA requests, whether they seek waivers of or reductions in fees, the Bureau seeks to address and resolve fee disputes at the outset of the request process and before the Bureau expends its time, resources, and funds to respond to requests. This procedure ensures that the Bureau does not perform work that the requester cannot, or does not wish to pay for, if the Bureau denies a fee waiver request.

The Bureau also declines to modify § 1070.22(f) of the interim final rule. This provision, which sets forth circumstances for requiring prepayment of fees, is consistent with guidance issued by the Office of Management and Budget for FOIA fees. *See* OMB Guidelines for FOIA Fees (1987), *available at http://www.whitehouse.gov/sites/default/files/omb/assets/omb/inforeg/foia_fee_schedule_1987.pdf.*

Section 1070.23 Authority and Responsibilities of the Chief FOIA Officer.

Section 1070.23 sets forth the various authorities and responsibilities of the Chief FOIA Officer of the Bureau. One commenter argues that § 1070.23 should include a provision that authorizes the Chief FOIA Officer to oversee the FOIA section of Bureau's Web site. The Bureau agrees with this comment and modifies the interim final rule to add a new paragraph (a)(7) that requires the Chief FOIA Officer to ''maintain and update, as necessary and in accordance with the requirements of this subpart, the CFPB's FOIA Web site, including its e-FOIA Library.''

Subpart C—Disclosure of CFPB Information in Connection With Legal Proceedings

Section 1070.30 Purpose and Scope; Definitions

Section 1070.30(a) outlines subpart C, which sets forth procedures for serving the Bureau and its employees with documents in legal proceedings, such as summonses, complaints, subpoenas, and other litigation-related requests or demands for records and information, as well as procedures and criteria for the Bureau to follow when responding to such materials. These regulations (which are sometimes referred to as *Touhy* regulations) are modeled after similar regulations of other Federal agencies.

Paragraph (b) clarifies that these procedures for serving legal documents on the Bureau do not apply to persons who seek to file FOIA requests or Privacy Act requests with the Bureau or those agencies that seek access to confidential information of the Bureau.

Paragraph (c) further clarifies that the procedures of subpart C do not apply to requests for information made in the course of adjudicating certain administrative employment actions brought by Bureau employees or applicants for employment.

Paragraph (d) notes that subpart C is not intended to, does not create, and may not be relied upon to create, any right or benefit, substantive or procedural, against the Bureau or the United States.

Paragraph (e) defines the terms ''demand,'' ''legal proceeding,'' ''official information,'' ''request,'' and ''testimony'' ''for purposes of this [subpart C] and except as the Bureau may otherwise determine in a particular case.''

One commenter argues that § 1070.30(e) is too malleable in that its definitions apply ''except as the Bureau may otherwise determine in a particular case.'' The commenter notes that this exception provides the Bureau with authority to redefine key terms as it sees fit to authorize disclosures of confidential information. The commenter suggests that the Bureau should eliminate this exception.

To eliminate any ambiguity as to the meaning of the defined terms of § 1070.30(e), the Bureau strikes the phrase ''except as the CFPB may otherwise determine in a particular case.'' The Final Rule also addresses several drafting errors and omissions.

Section 1070.31 Service of Summonses and Complaints

Section 1070.31 of the interim final rule states that only the Bureau's General Counsel is authorized to receive and accept service of process of summonses and complaints in which the Bureau or its employees (in their official capacities) are sued.

The Bureau received no comments on the interim final rule. The Bureau adopts the interim final rule with the following modification to reflect the new mailing address of the Bureau: 1700 G Street NW., Washington, DC 20552.

Section 1070.32 Service of Subpoenas, Court Orders, and Other Demands for CFPB Information or Action

Section 1070.32 of the interim final rule states that, except where the Bureau is represented by legal counsel who have entered an appearance or otherwise given notice of their representation, only the Bureau's General Counsel is authorized to receive and accept service of subpoenas, court orders, and litigation demands and requests for the production of the Bureau's records and official information that are directed to the Bureau or its employees (in their official capacities).

The Bureau received no comments on the interim final rule. The Bureau adopts the interim final rule with modifications that reflect the new mailing address of the Bureau: 1700 G Street NW., Washington, DC 20552. The final rule also clarifies certain service requirements. For example, paragraph (c) of the final rule eliminates the requirement that Bureau employees consult the General Counsel before declining to accept service of process on behalf of the Bureau. This modification simplifies the course of conduct for Bureau employees who are contacted by a process server and have no opportunity to consult with the General Counsel prior to deciding whether to decline to accept service. The final rule also corrects grammatical errors.

Section 1070.33 Testimony and Production of Documents Prohibited Unless Approved by the General Counsel

Section 1070.33 provides that no current or former Bureau employee shall provide oral or written testimony concerning any official information of the Bureau or produce any document or material acquired as part of or by virtue of his or her employment at the Bureau unless the Bureau's General Counsel authorizes the employee or former employee to do so. The Bureau received no comments on the interim final rule. The Bureau adopts the interim final rule without modification.

Section 1070.34 Procedure When Testimony or Production of Documents Is Sought; General

Section 1070.34 requires parties demanding the production of the Bureau's documents or testimony, in legal proceedings in which the United States or the Bureau are not parties, to provide the Bureau with certain information about the demand or request, including the name and forum of the proceeding, a detailed description of the nature of the information or testimony sought and its intended uses and relevance, a showing that the evidence sought through the production of the Bureau's records or testimony is not available from other sources, and, as the General Counsel deems appropriate, a statement of the party's plans to demand additional testimony or documents in the future. Unless and until a party provides this required information, the Bureau will not respond to a demand it receives. The Bureau received no comments on the interim final rule. The Bureau adopts the interim final rule without modification.

Section 1070.35 Procedure When Response To Demand Is Required Prior to Receiving Instructions

Section 1070.35 states that, whenever a response to a demand for testimony or the production of documents or materials described in § 1070.34 is due before the General Counsel renders a decision, then the Bureau will seek an extension of time to respond. If no extension is available or granted, then the Bureau will request that the court or other applicable authority stay the proceedings until such time as the General Counsel is able to respond. The Bureau received no comments on the interim final rule. The Bureau adopts the interim final rule without modification.

Section 1070.36 Procedure in the Event of an Adverse Ruling

Section 1070.36 states that, whenever a court or other applicable authority declines to stay proceedings until the General Counsel is able to respond to a demand for testimony or the production of documents or materials described in § 1070.34, or the court or other authority rules that the Bureau must comply with the demand irrespective of the General Counsel's instructions otherwise, then the employee upon whom the demand has been made shall respectfully decline to comply with the demand citing this subpart and *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951). The Bureau received no comments on the interim final rule. The Bureau adopts the interim final rule without modification.

Section 1070.37 Considerations in Determining Whether the CFPB Will Comply With a Demand or Request

Section 1070.37 sets forth various factors that the General Counsel shall consider in deciding whether to comply with a demand or request for the production of the Bureau's records or testimony. This section also lists factors that will normally cause the Bureau to refuse compliance with such a demand or request. These factors pertain to prudential considerations and discovery privileges established by Federal statutes, rules, and case law.

Commenters argued generally that the provisions of subpart C do not do enough to protect confidential supervisory information from disclosure in a litigation context. Commenters note that the regulations of other Federal bank regulatory agencies contain provisions which state that normally, the agency will not release confidential supervisory information in response to a demand or request for such information.

Section 1070.37 of the rule reflects the Bureau's intention to protect confidential supervisory information from disclosure in a litigation context. Paragraph (b) lists several factors that if found to exist would normally preclude the Bureau from granting a demand or request for confidential supervisory information. These factors include: (b)(4) ''[c]ompliance would reveal confidential or privileged commercial or financial information or trade secrets without the owner's consent''; (b)(6) ''[c]ompliance would not be appropriate or necessary under the relevant substantive law governing privilege''; and (b)(7) ''[c]ompliance would reveal confidential information.'' Paragraph (c) of this section also provides that the Bureau may condition disclosure of confidential supervisory information pursuant to a request or demand upon the entry of an appropriate protective order.

Although the Bureau believes that these provisions adequately protect confidential supervisory information from disclosure, the Bureau nevertheless adds two new factors to paragraph (b) to bolster these protections further. The first new factor states that the Bureau will not normally grant a response to a request or demand for confidential supervisory information when doing so would compromise the Bureau's supervisory functions or programs or would undermine public confidence in supervised institutions. The second factor states that the Bureau will not normally grant a response when doing so would undermine the Bureau's ability to monitor for risks to consumers in the offering of consumer financial products or services.

Section 1070.38 Prohibition on Providing Expert or Opinion Testimony

Section 1070.38 prohibits Bureau employees or former employees from providing opinion or expert testimony based upon information (other than general expertise) which they acquired in the scope and performance of their official Bureau duties, except to the extent that they provide such testimony on behalf of the United States or a party represented by the Bureau or the Department of Justice. The General Counsel has discretion to waive this prohibition if the requestor demonstrates an exceptional need or unique circumstances and that the anticipated testimony will neither be adverse to the United States nor require the United States to pay the employee's or former employee's travel or other expenses associated with providing the requested testimony.

A commenter argues that the Bureau should eliminate § 1070.38(c), which permits Bureau employees to testify as expert witnesses under certain circumstances, because ''[g]iving free expert testimony is not among the permissible Bureau disclosures of information.''

The Bureau adopts the interim final rule without modification. Paragraph (c) is consistent with the rules of other Federal agencies and with Federal ethics regulations regarding the provision of expert testimony by Federal employees.

Subpart D—Confidential Information

Section 1070.40 Purpose and Scope

Section 1070.40 clarifies that subpart D does not apply to FOIA or Privacy Act requests or requests or demands for official information made within the context of litigation. The Bureau received no comments on the interim final rule. The Bureau adopts the interim final rule without modification.

Section 1070.41 Non-Disclosure of Confidential Information

Section 1070.41(a) generally prohibits the disclosure of confidential information by the Bureau's employees, former employees, or other persons who possess the Bureau's confidential information, to non-employees of the Bureau or to Bureau employees for whom such information is not relevant to the performance of their assigned duties. This prohibition includes disclosures made by any means (including written or oral communications) or in any format (including paper and electronic formats).

Excluded from this general prohibition are disclosures of confidential information to consultants and contractors of the Bureau who agree, in writing, to protect the confidentiality of the information in accordance with Federal law as well as any additional conditions or limitations that the Bureau may impose upon them.

Section 1070.41(c) states that the Bureau is not precluded from disclosing materials that it derives from or creates using confidential information, provided that such materials do not identify, either directly or indirectly, any particular persons to whom the confidential information pertains. This paragraph clarifies that the Bureau may create and publish reports, analyses, and other materials derived from confidential information so long as the reports, analyses, or other materials do not identify the subject of such information or discuss the information in such a way that one could infer the identity of the person it concerns. For example, the Bureau is not precluded from publishing reports that contain aggregate data derived from confidential information, provided the report cannot be used in conjunction with other publicly available information to re-identify the source of the information.

Section 1070.41(d) clarifies that nothing in subpart D requires or authorizes the Bureau to disclose confidential information that another agency has provided to the Bureau to the extent that such disclosure contravenes applicable law or the terms of any agreement that exists between the Bureau and the agency to govern the Bureau's treatment of information that the agency provides to the Bureau.

The Bureau received several comments on § 1070.41. One commenter argues that § 1070.41(a)(2), which limits the internal dissemination of confidential information to Bureau employees with a *bona fide* need to know the information to perform assigned duties, is incongruous with § 1070.41(b), which permits disclosures of confidential information to the Bureau's contractors without qualification. The commenter argues that the Bureau should either eliminate any restriction on the internal dissemination in paragraph (a) or apply it equally to contractors in § 1070.41(b). To the extent that the Bureau chooses to do the latter, another commenter argues that the Bureau should amend § 1070.41(b) to state that disclosures to contractors or consultants may occur only as necessary to, and solely for purposes of, providing services for or rendering advice to the Bureau.

One commenter argues that the Bureau should delete § 1070.41(c), which authorizes the Bureau to disclose materials derived from confidential information so long as such materials do not identify those to whom the confidential information pertains, because the Trade Secrets Act may prohibit certain of these disclosures. Another commenter also criticizes this provision because it fails to specify criteria for determining that materials derived from confidential information do not identify, either directly or indirectly, any particular person to whom the confidential information pertains.

A commenter objects to § 1070.41(d), which states that subpart D does not require or authorize the disclosure of confidential information otherwise prohibited by applicable law or by the terms of any agreements reached with other agencies. The commenter argues that the Bureau should delete the phrase ''or the terms of any agreement that exists between the CFPB and the agency to govern the CFPB's treatment of information that the agency provides to the CFPB'' because, according to the commenter, this provision allows the Bureau to withhold information, pursuant to agreement, that other laws, such as the Freedom of Information Act, require the Bureau to disclose.

To address concerns that paragraphs (a) and (b) of § 1070.41 set forth inconsistent criteria for disclosing confidential information to Bureau employees on one hand and to Bureau contractors or consultants on the other hand, the Bureau modifies these paragraphs to provide for consistent treatment. In making these modifications, the Bureau deems it appropriate to retain restrictions in paragraph (a) on the internal dissemination of confidential information. By prohibiting the disclosure of confidential information to employees, contractors, and consultants who have no business reason to see it, the Bureau reduces the risk that such persons will misuse or inadvertently disclose the information. Such restrictions also are consistent with regulations established by other Federal agencies to protect confidential information.

The Bureau adopts paragraph (c) of the interim final rule without modification. The Bureau declines to adopt more specific or stringent standards for determining that materials it derives from confidential information do not identify any particular person to whom the information pertains. The interim final rule allows the Bureau to report on and discuss its work involving confidential information while providing reasonable assurance that when it does so, it protects the persons to whom confidential information pertains.

The interim final rule protects persons to whom confidential information pertains by allowing the Bureau to publish materials it derives from such confidential information only if the materials do not identify ''directly or indirectly'' the persons to whom it pertains. This provision precludes the Bureau from publishing materials that identify such persons expressly or that a reader could combine with materials readily available from other sources to deduce the identity of such persons.

The Bureau believes that the interim final rule strikes an appropriate balance between the need to maintain the confidentiality of proprietary or other sensitive information and the Bureau's obligations, under provisions of the Dodd-Frank Act such as sections 1021 and 1022, to inform the public about the functioning of the marketplace for consumer financial products and services.

The Bureau also concludes that it is inappropriate to specify more detailed criteria for determining when materials derived from confidential information are sufficiently anonymized for disclosure. The applicable criteria will differ significantly depending upon the type of confidential information at issue and the context in which it exists. The interim final rule offers appropriate discretion to the Bureau to make determinations based upon the facts and circumstances of each set of materials it seeks to disclose.

The Bureau adopts paragraph (d) of the interim final rule without modification. This paragraph does not authorize the Bureau, pursuant to the terms of its confidentiality agreements with other agencies, to withhold confidential information from disclosure when applicable laws, such as the FOIA, require its disclosure. Instead, this paragraph simply clarifies that subpart D does not permit or authorize the Bureau to voluntarily disclose confidential information that it obtains from other agencies, in violation of its confidentiality agreements with such agencies, where applicable law otherwise authorizes (but does not require) the Bureau to disclose the information. These agreements would not and could not preclude the disclosure of confidential information where applicable law requires the Bureau to disclose it. In this regard, the Bureau notes that § 1070.41(a) of this subpart authorizes the Bureau to disclose confidential information ''as required by law'' and that § 1070.40 states that the provisions of subpart D do not govern the Bureau's responses to FOIA requests. Finally, we note that none of the Bureau's confidentiality agreements purport to preclude the Bureau from disclosing confidential information where applicable law requires it do so.

Section 1070.42 Disclosure of Confidential Supervisory Information to and by Supervised Financial Institutions

Section 1070.42(a) of the interim final rule provides that the Bureau may, in its discretion, disclose confidential supervisory information, such as reports of examination, to supervised financial institutions to which the reports pertain. To the extent that the Bureau chooses to do so, § 1070.42(b) prohibits institutions from further disseminating the confidential information they receive except in limited circumstances. Supervised financial institutions may share confidential supervisory information with their directors, officers, and employees, and with those of their parent companies, to the extent that the disclosure of such confidential supervisory information is relevant to the performance of such individuals' assigned duties. Supervised financial institutions may also share confidential supervisory information with their (or their parent companies') outside legal counsel, certified public accountants, and consultants, provided that the supervised financial institutions take reasonable steps to ensure that such legal counsel, accountants, or consultants do not utilize, make or retain copies of, or further disclose confidential information except as is necessary to provide advice to the supervised financial institutions, their parent companies, or to their respective directors, officers, or employees. Furthermore, the institutions must keep written records of their disclosures of confidential information to their legal counsel, accountants, and consultants, along with the steps they have taken to ensure that these accountants, legal counsel, and consultants do not improperly utilize, make or retain copies of, or disclose such information. Supervised financial institutions shall provide these written records to the Bureau, upon request or demand.

One commenter criticizes § 1070.42(b) of the interim final rule, which prohibits financial institutions in receipt of confidential information from further disclosing such information, except to its officers, directors, parents, and certain of its employees, and to its outside accountants, legal counsel, and consultants. The commenter argues that this provision is unreasonably restrictive in that financial institutions may have legitimate reasons to share confidential information with affiliates and with any manner of third-party service providers acting on their behalf. Commenters also object to the requirement of § 1070.42(b)(2)(ii) that financial institutions keep a written account of all of their disclosures of confidential information to third parties. The commenter argues that the Bureau has no authority to require such accounting to the extent that disclosures occur in a privileged context.

The Bureau modifies paragraphs (a) and (b) of the interim final rule. The final rule permits the Bureau to disclose confidential supervisory information that concerns a supervised financial institution or its service providers (as section 1002(26) of the Dodd-Frank Act defines that term) to that supervised financial institution, to its directors, officers, trustees, members, general partners, or employees, as well as to its ''affiliates'' (as section 1002(1) of the Dodd-Frank Act defines that term) and the directors, officers, trustees, members, general partners, or employees of such affiliates. The final rule also permits a supervised financial institution to further disclose confidential supervisory information that it lawfully receives from the Bureau to its directors, officers, trustees, members, general partners, and employees and to its affiliates and its affiliate's directors, officers, trustees, members, general partners, or employees, to the extent that such disclosures are relevant to the performance of these individuals' assigned duties.

Furthermore, the final rule now permits a supervised financial institution or its affiliate to further disclose confidential supervisory information that it lawfully receives from the Bureau to its certified public accountants, outside legal counsel, contractors, consultants, and service providers as well as, with the prior written authorization of the Associate Director for Supervision, Enforcement, and Fair Lending or his or her delegee, to other persons, provided that the supervised financial institution or its affiliate shall take reasonable steps to ensure that such recipients do not, without the prior written approval of the Associate Director for Supervision, Enforcement, and Fair Lending or his or her delegee, utilize, make or retain copies of, or disclose confidential supervisory information for any purpose, except as is necessary to provide advice or services to the supervised financial institution or its affiliate.

In response to the comments discussed above, the final rule deletes the disclosure accounting requirements of paragraph (b)(2)(ii) of this section. The Bureau agrees with commenters that this accounting requirement is burdensome and that the restrictions of § 1070.47 of this subpart are sufficient to protect confidential supervisory information against further disclosures.

Section 1070.43 Disclosure of Confidential Information to Law Enforcement Agencies and Other Government Agencies

Section 1070.43 sets forth circumstances under which the Bureau must or may disclose various categories of confidential information to other government agencies.

Section 1070.43(a)(1) implements sections 1022(c)(6)(C)(i) and 1025(e)(1)(C) of the Dodd-Frank Act, which require the Bureau to share with Federal and State agencies having jurisdiction over supervised financial institutions, the Bureau's reports of examination of those supervised financial institutions, including drafts thereof, final reports, and revisions to final reports, provided that the Bureau receives from the agencies reasonable assurances that they will maintain the confidentiality of the information provided.

Section 1070.43(a)(2) implements section 1013(b)(3)(D) of the Dodd-Frank Act, which requires the Bureau to share confidential consumer complaint information with Federal and State agencies, provided that the agencies first give written assurances to the Bureau that they will maintain such information in a manner that conforms to the standards that apply to Federal agencies for the protection of the confidentiality of personally identifiable information and for data security and integrity.

Section 1070.43(b)(1) of the interim final rule authorizes the Bureau to make discretionary disclosures of confidential information to Federal and State agencies under certain circumstances. For example, this provision implements section 1022(c)(6)(C)(ii) of the Dodd-Frank Act, which authorizes the Bureau, upon request, to share examination reports as well as other reports and confidential supervisory information about supervised financial institutions with Federal and State agencies having jurisdiction over those institutions. Section 1070.43(b)(1) also authorizes the Bureau, upon request, to share confidential investigatory information about supervised financial institutions with Federal and State agencies having jurisdiction over those institutions.

Section 1070.43(b)(2) sets forth procedures for Federal and State agencies to follow when requesting access to the Bureau's confidential information as set forth in section 1070.43(b)(1). The Bureau's General Counsel is responsible for acting upon such requests in consultation with the Bureau's Associate Director for Supervision, Enforcement, and Fair Lending or with other appropriate Bureau personnel. Requests must be submitted in writing by authorized officers or employees of the requesting agencies. Requests should describe the nature of the confidential information and documents sought and the purposes for which it will be used. Requests should also identify the agency's legal authority for requesting the documents and any provisions that restrict the Bureau's authority to disclose the information. Finally, the requests should certify that the requesting agency will maintain the requested confidential information in accordance with this rule and in a manner that conforms to the standards that apply to Federal agencies for the protection of the confidentiality of personally identifiable information and for data security and integrity. Moreover, the requests should certify that the agencies will adhere to any additional conditions or limitations that the Bureau, in its discretion, decides to impose.

Section 1070.43(c) clarifies that requests by State agencies for information or records of the Bureau that do not constitute confidential information must be made in accordance with the Bureau's FOIA regulations set forth in subpart B.

Sections 1070.43(d) permits the Bureau to enter into agreements with Federal and State agencies that provide for standing access to confidential information.

The majority of the comments that the Bureau received in response to the interim final rule pertain to § 1070.43.

Several commenters argue that the Bureau lacks authority under the Dodd-Frank Act to make disclosures of confidential information either at all or to the extent provided by § 1070.43.

One commenter asserts that the Dodd-Frank Act does not authorize the Bureau to disclose any confidential information to the State attorneys general or to private parties. This commenter argues that the Bureau promulgated § 1070.43(b) of the interim final rule based upon a misinterpretation of section 1022(c)(6)(C)(ii) of the Dodd-Frank Act. Section 1022(c)(6)(C)(ii) of the Dodd-Frank Act provides that, ''[i]n addition to the [examination] reports described in clause (i), the CFPB may, in its discretion, furnish to a prudential regulator or other agency having jurisdiction over a covered person or service provider any other report or other confidential supervisory information concerning such person examined by the CFPB under the authority of any other provision of Federal law.'' The commenter argues that this provision does not authorize the Bureau to disclose confidential supervisory information; rather, it authorizes the Bureau to withhold supervisory information. That is, the commenter believes that section 1022(c)(6)(C)(ii) means that the Bureau may decline to disclose confidential supervisory information to other agencies when a provision of Federal law other than section 1022(c)(6)(C)(i) authorizes the disclosure. This commenter also asserts that section 1022(c)(6)(C)(ii) of the Dodd-Frank Act permits discretionary disclosures only to a ''prudential regulatory or other agency'' and that these terms do not include State attorneys general or private parties.

Other commenters argue that the Dodd-Frank Act does not authorize the Bureau to disclose confidential information to State attorneys general for purposes unrelated to the enforcement of consumer financial law or, as stated by one commenter, for purposes unrelated to the enforcement of Federal consumer financial law.

Commenters furthermore argue that by authorizing the Bureau to share confidential information with State attorneys general in circumstances where they lack authority to enforce applicable law within the judicial process, § 1070.43(b) expands State investigative powers beyond the limits set forth in section 1047 of the Dodd-Frank Act and the Supreme Court's decision in *Cuomo* v. *Clearinghouse Ass'n, LLC,* 557 U.S. 519 (2009). Section 1047 of the Dodd-Frank Act amends the National Bank Act (NBA) and the Home Owners Loan Act (HOLA) to confirm the Supreme Court's view in *Cuomo* that the NBA's references to visitorial authority of the Office of the Comptroller of the Currency do not limit or restrict the authority of State attorneys general to enforce applicable law against national banks or Federal savings associations or to seek relief as authorized by such law. According to the commenters, the *Cuomo* decision rejects a State attorney general's authority to obtain information directly from national banks when it does so outside of the context of a judicial proceeding where it is seeking to enforce applicable law. The commenters argue that in codifying the *Cuomo* decision in section 1047 of the Dodd-Frank Act, Congress could not have intended for State attorneys general to be able to obtain from the Bureau confidential information relating to national banks that these attorneys general could not obtain directly from such banks. These commenters propose that the Bureau limit its disclosure of confidential information to State attorneys general to circumstances where the attorneys general exercise their authority to enforce applicable law within a judicial process and such disclosure relates to the exercise of that authority by the State attorneys general.

Other commenters argue that the Bureau should either prohibit outright the disclosure of confidential information to other agencies, and to State attorneys general in particular, or restrict the circumstances under which the Bureau may do so. Commenters present varied proposals for applicable disclosure standards.

One commenter proposes that the Bureau limit the disclosure of confidential information to State attorneys general to circumstances where the attorneys general demonstrate that they seek such information for purposes of enforcing consumer financial protection laws. Other commenters propose that disclosures of confidential supervisory information should be limited to agencies with financial institution supervisory authority.

Some commenters suggest that, consistent with disclosure standards promulgated by some other Federal bank regulatory agencies, the Bureau should permit discretionary disclosures of confidential supervisory information only if requesters demonstrate a substantial need for the information that outweighs the need to maintain confidentiality and only when requestors have no other means of acquiring the information directly from the financial institutions to which it pertains or otherwise.

Commenters also propose that the Bureau impose additional procedural requirements for the discretionary disclosure of confidential information. Several commenters propose that requests for confidential information should be granted only when made by senior officials of or the heads of requesting agencies. Others suggest that the Bureau should require requesters of confidential information to represent that they have implemented and maintain comprehensive information security programs to protect the confidentiality and security of the information requested. They maintain that the Bureau should take steps to confirm such representations and audit requesters' systems for maintaining the confidentiality and security of information disclosed.

Commenters furthermore argue that the Bureau should provide financial institutions with notice of third party requests for confidential information as well as opportunities to object to such disclosures unless the Bureau determines, in its discretion, that doing so would advantage or prejudice any of the parties in the matter at issue. Similarly, one commenter suggests that the Bureau should refer requests for confidential information to prudential regulators so that they can prohibit disclosure if a rational basis exists to conclude that disclosure would threaten the safety and soundness of the institutions concerned.

Finally, one commenter asks the Bureau to clarify that § 1070.43(a)(1), which requires the Bureau to disclose reports of examination to certain Federal and State agencies, pertains to examination reports of both depository and non-depository institutions.

As a preliminary matter, the Bureau affirms its authority under the Dodd-Frank Act to promulgate a rule that provides for the disclosure of confidential information to Federal and State agencies, including State attorneys general.

Section 1012 of the Dodd-Frank Act grants to the Director authority to establish rules for conducting the general business of the Bureau, to implement the Federal consumer financial laws through rules, and to perform such other functions as may be authorized or required by law. In addition, section 1022(b)(1) authorizes the Bureau to ''prescribe rules * * *, as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws * * *.'' Finally, section 1022(c)(6)(A) of the Dodd-Frank Act authorizes the Bureau to ''prescribe rules regarding the confidential treatment of information obtained from persons in connection with the exercise of its authorities under Federal consumer financial law.'' These and other provisions of the Dodd-Frank Act provide the Bureau with ample authority to prescribe rules that govern which of the information that it generates or obtains it will regard as ''confidential,'' what confidentiality means, and the terms and conditions under which the Bureau will share confidential information with other Federal or State agencies.

Furthermore, § 1070.43 implements several provisions of the Dodd-Frank Act that require or authorize the Bureau to share confidential information with Federal and State agencies.[7]

For example, section 1013 of the Dodd-Frank Act expressly requires the Bureau to route consumer complaints to Federal and State agencies as well as to share consumer complaint information with prudential regulators, the Federal Trade Commission, other Federal agencies, and State agencies, provided that such agencies protect the confidentiality of personally identifiable information associated with such complaints. Section 1070.43(a)(2) of the rule implements this provision of the Dodd-Frank Act.

Section 1022(c)(6)(C)(i) of the Dodd-Frank Act requires the Bureau to share with prudential regulators, State regulators, or any other Federal agencies having jurisdiction over a covered person or service provider ''any report of examination made by the Bureau with respect to such person, and to all revisions made to such report,'' provided that such regulators or agencies give the Bureau reasonable assurances that they will maintain the confidentiality of the information shared. Section 1070.43(a)(1) of the rule implements this provision of the Dodd-Frank Act.

In addition to requiring the Bureau to share examination reports with other regulators and Federal agencies, section 1022(c)(6)(C)(ii) of the Dodd-Frank Act permits the Bureau, ''in its discretion, [to] furnish to a prudential regulator or other agency having jurisdiction over a covered person or service provider any other report or other confidential supervisory information concerning such person examined by the Bureau under the authority of any other provision of Federal law.'' The Bureau interprets this provision as permitting it to share examination reports as well as other reports and confidential supervisory information with all prudential regulators and all agencies—including State attorneys general—that have jurisdiction over the covered persons or service providers to which the shared information pertains. Section 1070.43(b) of the rule implements this provision of the Dodd-Frank Act.

The Bureau disagrees with the commenter who argues that section 1022(c)(6)(C)(ii) of the Dodd-Frank Act should not be interpreted as a grant of discretionary authority to share confidential supervisory information with other agencies, and that it instead merely qualifies section 1022(c)(6)(C)(i) of the Dodd-Frank Act by authorizing the Bureau to withhold from other agencies reports or other confidential supervisory information that the Bureau generates or obtains pursuant to Federal laws other than the Dodd-Frank Act. The commenter's interpretation of section 1022(c)(6)(C)(ii) is contrary to what the Bureau concludes is the better meaning of the provision. Rather than use language which states or implies that section 1022(c)(6)(C)(ii) qualifies or limits the information sharing requirement of section 1022(c)(6)(C)(i), Congress began section 1022(c)(6)(C)(ii) with the language ''[i]n addition to the reports described in clause (i), the Bureau may, in its discretion, furnish * * *.'' This language suggests that Congress intended for the information sharing authority it granted in clause (ii) to be a positive grant of authority that supplements the authority it granted in clause (i). Moreover, the last portion of section 1022(c)(6)(C)(ii)—''any other report or other confidential supervisory information concerning such person examined by the Bureau under the authority of any other provision of Federal law''—suggests that in addition to the examination reports that the Bureau must share with other agencies, the Bureau may also choose to share with other agencies other reports or confidential supervisory information that it creates or obtains through its exercise of examination powers other than those that Congress describes in section 1022(c)(6)(C) of the Dodd-Frank Act.

The Bureau also disagrees with commenters that section 1022(c)(6)(C) of the Dodd-Frank Act does not permit the Bureau to share examination reports or confidential supervisory information with State attorneys general. In delineating the Bureau's responsibilities and authorities to share confidential supervisory information, section 1022(c)(6)(C) of the Dodd-Frank Act discusses sharing with a ''regulator''—a term that, when applied to the States, may include a State attorney general in certain circumstances—and sharing with an ''agency''—a broader term that, when applied to the States, encompasses State attorneys general in all circumstances. When section 1022(c)(6)(C)(i) provides that the Bureau must share examination reports with a ''prudential regulator, a State regulator, or any other Federal agency having jurisdiction over a covered person or service provider,'' the Bureau interprets the provision to require it to share such reports with State attorneys general to the extent that they regulate the covered persons or service providers to which the reports pertain, but not to require the Bureau to share these reports with State attorneys general that do not regulate such entities. Nevertheless, when section 1022(c)(6)(C)(ii) provides that the Bureau may share examination reports, as well as other reports or confidential supervisory information, with ''a prudential regulator or other agency having jurisdiction over a covered person or service provider,'' it permits the Bureau to share examination reports as well as other reports and confidential supervisory information with all Federal and State agencies, including State attorneys general, that both do and do not regulate the covered persons or service providers to which the information pertains (to the extent that such agencies have jurisdiction over such covered persons or service providers).

Although the Bureau has legal authority under the Dodd-Frank Act to promulgate § 1070.43, and to share its confidential information with other agencies, including with State attorneys general, the Bureau has made clear that it intends to exercise its discretion

[7] Section 1070.43 of the rule comports with section 1022(c)(8) of the Dodd-Frank Act. Section 1022(c)(8) of the Dodd-Frank Act requires the Bureau to ''take steps to ensure that proprietary, personal, or confidential consumer information that is protected from public disclosure under section 552(b) or 552a of title 5, United States Code, or any other provision of law, is not made public under this title.'' The Bureau interprets this provision of the Dodd-Frank Act to require the Bureau to take steps to prevent ''public'' disclosures of this information; section 1022(c)(8) does not preclude the Bureau from sharing this information with other agencies as long as the Bureau takes steps to ensure that these agencies will not make the information available to the public. If the Bureau takes such steps, then its sharing of confidential information with other agencies is not tantamount to a public disclosure.

The rule includes appropriate measures to ensure that information that the Bureau shares with other agencies will remain confidential once shared. Section 1070.43(a) requires the Bureau to share certain confidential information with State agencies only to the extent that these agencies provide assurances to the Bureau that they will maintain the information in confidence. Section 1070.43(b) authorizes the General Counsel to grant agency requests for access to confidential information only to the extent that the requesting agencies first commit to maintain the information in confidence. Furthermore, section 1070.47(a) of the rule prohibits agencies in receipt of confidential information from further disclosing such information to third parties without the prior written permission of the Bureau. Lastly, section 1070.47(c) preserves any applicable legal privileges when the Bureau shares confidential information with other agencies.

carefully. The Bureau recently articulated the following policy for sharing confidential supervisory information with law enforcement agencies:

> [T]he Bureau will not routinely share confidential supervisory information with agencies that are not engaged in supervision. Except where required by law, the Bureau's policy is to share confidential supervisory information with law enforcement agencies, including State Attorneys General, only in very limited circumstances and upon review of all of the relevant facts and considerations. The significance of the law enforcement interest at stake will be an important consideration in any such review. However, even the furtherance of a significant law enforcement interest will not always be sufficient, and the Bureau may still decline to share confidential supervisory information based upon other considerations, including the integrity of the supervisory process and the importance of preserving the confidentiality of the information. In these circumstances, the decision whether to provide confidential supervisory information to another agency will be made by the General Counsel, in consultation with appropriate Bureau personnel.

CFPB Bulletin 12–01 (Jan. 4, 2012) (footnote and citation omitted). The Bureau intends to employ this policy when it decides whether, and to what extent, to share confidential supervisory information with State attorneys general.

The Bureau also declines to incorporate into § 1070.43(b) additional procedural requirements for sharing confidential information with other agencies. Section 1070.43(b) already requires agencies that request confidential information to make formal written requests through authorized officers or employees. Such requests must describe the information requested, the purposes for which it will be used, the requesting agency's legal authority for requesting the information, and any applicable restrictions on its authority to protect the requested information. Furthermore, the requests must certify the requester's commitment to maintain the confidentiality, security, and integrity of the requested information. The General Counsel also may require the requester to certify adherence to such additional terms and conditions as she sees fit to impose. The Bureau believes that these procedures, which are largely consistent with those of other Federal bank regulatory agencies, adequately ensure that the General Counsel shares confidential information only with appropriate agencies, for appropriate purposes, and only to the extent that such agencies are willing and able to protect the confidentiality, security, and integrity of the information disclosed.

The Bureau does not deem it necessary or appropriate to impose the more stringent procedural requirements that commenters propose.

For example, the Bureau declines to seek approval of prudential regulators prior to granting requests to share its confidential information with other agencies. There is no basis in the Dodd-Frank Act for requiring such approval and in any event, there are inter-agency agreements that govern the sharing of confidential information between Federal and State regulators.

The Bureau also declines to require that only senior agency officials or agency heads may file requests for access to confidential information when it already requires that only authorized officials or employees may do so.

Furthermore, the Bureau does not deem it necessary to undertake audits of the security systems of requesting agencies to determine whether these agencies are capable of adequately safeguarding confidential information. Prior to disclosing confidential information pursuant to § 1070.43(b), the Bureau will take reasonable steps to ensure that requesting agencies are legally authorized to protect the confidentiality of the information and that they have systems in place to safeguard it from theft, loss, or unauthorized access or disclosure.

The Bureau will not revise its rules to require it to notify financial institutions when it receives requests from other agencies for confidential information or to allow financial institutions to object to its determinations to grant such requests. The Bureau shares information with other agencies typically within the context of joint supervisory examinations and law enforcement investigations. Within this context, notification could reveal prematurely plans to investigate or examine financial institutions and might compromise these joint endeavors. Similarly, financial institutions could misuse a right to object to the Bureau's information sharing determinations to obstruct or stymie or joint investigations or examinations.

Finally, the Bureau deems it unnecessary to modify § 1070.43(a)(1) to clarify that the Bureau must share with certain other agencies reports of examination of both depository and non-depository financial institutions. The definition of the phrase ''financial institution'' in § 1070.2(l) of the rule is broad and includes all manner of covered persons and service providers, including non-depository institutions.

Although the Bureau declines to supplement the procedural requirements of § 1070.43, the final rule modifies elements of that provision for purposes of clarification.

First, the Bureau modifies § 1070.43(a)(2) to clarify that the Bureau shall share confidential consumer complaint information with agencies to the extent that they provide written certifications to the Bureau that they will maintain the information in confidence, including by maintaining it in a manner that conforms to the standards that apply to Federal agencies for the protection of the confidentiality of personally identifiable information and for data security and integrity.

Second, the Bureau modifies § 1070.43(b)(2)(iv) of the interim final rule to clarify that the Bureau requires a requesting agency to identify its legal authority to protect the requested documents from public disclosure.

Third, the Bureau modifies § 1070.43(b)(2)(v) of the interim final rule to clarify that agencies seeking access to confidential information must certify that they will keep that information confidential in addition to safeguarding it ''in a manner that conforms to the standards that apply to Federal agencies for the protection of the confidentiality of personally identifiable information and for data security and integrity'' and complying with such additional conditions and limitations as the Bureau sees fit to impose. For purposes of both §§ 1070.43(a)(2) and 1070.43(b)(2)(v), the Bureau interprets the phrase ''standards that apply to Federal agencies for the protection of the confidentiality of personally identifiable information and for data security and integrity'' to mean, at a minimum, that an agency shall store confidential information in a secure environment where access is limited only to those of its employees, contractors, and agents who have a *bona fide* need for the information to perform their official duties relating to the purpose for which the information was shared. Furthermore, the Bureau requires the agency to notify the Bureau immediately of any actual or suspected security breach involving confidential information, including any theft, loss, unauthorized disclosure, or misuse of any confidential information that consists of personally-identifiable information.

Section 1070.44 Disclosure of Confidential Consumer Complaint Information.

Section 1070.44 states that nothing in this part limits the Bureau's discretion to disclose confidential consumer complaint information, to the extent permitted by law, to the extent that such disclosure is necessary to investigate, resolve, or otherwise respond to consumer complaints or inquiries regarding financial institutions or consumer financial products and services.

One commenter argues that the Bureau should specify, in § 1070.44, the circumstances in which it intends to disclose confidential consumer complaint information. The commenter suggests that the Bureau should keep consumer complaints confidential, especially to the extent that they are unsubstantiated, to avoid harming the reputations and financial performance of financial institutions. Even where substantiated, the commenter argues that the Bureau should address complaints privately or through enforcement actions, and not through public disclosure.

The Bureau adopts the interim final rule without modification. On June 22, 2012, the Bureau published in the **Federal Register** its policy for publishing consumer complaints online. This policy addresses the commenter's concerns. *See* 77 FR 37558.

Section 1070.45 Affirmative Disclosure of Confidential Information

Section 1070.45(a) of the interim final rule permits the Bureau to affirmatively disclose confidential investigative information, such as civil investigative demand material and other confidential information that becomes part of the Bureau's investigative files, to Bureau employees, to law enforcement and other governmental agencies, in investigational hearings and witness interviews, and to either House of or a committee or subcommittee of the Congress, upon request. The Bureau may also disclose confidential information in administrative or court proceedings to which the Bureau is a party. In the case of confidential investigatory material that contains any trade secret or privileged or confidential commercial or financial information, as claimed by designation by the submitter of such material, or confidential supervisory information, the submitter may seek an appropriate protective or *in camera* order prior to disclosure of such material in a proceeding.

The Bureau received several comments regarding § 1070.45. One commenter argues that the Bureau should implement section 1052(d)(2) of the Dodd-Frank Act by amending § 1070.45(a)(2) of the interim final rule to state that the Bureau shall provide financial institutions with prior notice of its disclosures of confidential information to the Congress. Furthermore, the commenter suggests that the rule should state that the Bureau will provide information to the Congress only to the extent that it is stripped of identifying information. Finally, the commenter argues that the rule should state that the Bureau will eliminate its authorization to provide confidential information to subcommittees of Congress.

One commenter also expresses concern that § 1070.45(a)(4) of the interim final rule unfairly places the burden on financial institutions to seek a protective or *in camera* order whenever the Bureau seeks to disclose confidential investigatory material in the course of an administrative or court proceeding to which the Bureau is a party. The commenter argues that, in accordance with the practice of other Federal bank regulatory agencies, the Bureau should assert all applicable privileges and seek a protective order when using confidential information during the course of an administrative or court proceeding.

Another commenter proposes that the Bureau delete § 1070.45(a)(5), which states that Bureau may affirmatively disclose confidential information ''[t]o law enforcement and other government agencies in accordance with this subpart.'' The commenter notes that this provision seems duplicative of § 1070.43 of the interim final rule, and to the extent it is not so, it permits the disclosure of confidential supervisory information without restriction.

The Bureau implements section 1052(d)(2) of the Dodd-Frank Act by modifying section 1070.45(a)(2) of the interim final rule to state that upon receiving a request from the Congress for confidential information that a financial institution has submitted to the Bureau, the Bureau shall provide written notice to the financial institution of its receipt of the request, along with a copy of the request.

However, the Bureau declines to modify this paragraph to exclude disclosures to Congress of personally identifiable information insofar as section 1052(d)(2) of the Dodd-Frank Act expressly states that no rule of the Bureau shall prevent disclosures to the Congress of information obtained by the Bureau.

The Bureau also disagrees with the commenter that this paragraph should exclude disclosures of confidential information to Congressional subcommittees.

The Bureau declines to modify § 1070.45(a)(4) of the interim final rule to require the Bureau to assert all available objections to the disclosure of confidential information and to seek an appropriate protective or *in camera* order prior to such disclosure.

The Bureau revises § 1070.45(a)(5) of the interim final rule to clarify its intended meaning. As revised, this provision allows the Bureau, on its own initiative, to alert other agencies of its discovery of evidence that may indicate violations of laws that are subject to these agencies' jurisdiction and, to the extent the Bureau deems it necessary to alert agencies of such evidence, to summarize evidence that constitutes confidential information.

The Bureau intends for § 1070.45(a)(5) to be a precursor to but not a substitute for the procedure set forth in § 1070.43(b) of this subpart by which agencies submit to the General Counsel requests for access to full written copies of the Bureau's confidential information. For example, a Bureau employee may call a counterpart in another agency to advise the agency that, during the course of a Bureau investigation into violations of laws subject to the Bureau's jurisdiction, the Bureau uncovered evidence of conduct that may also constitute a violation of laws subject to the agency's jurisdiction. To the extent the Bureau employee deems it necessary to alert the agency of the relevant conduct, the employee may summarize to the agency counterpart the Bureau's evidence that constitutes confidential information. The Bureau employee may not, however, share with the agency counterpart a full written copy of such confidential information. To obtain a complete written copy of the confidential information, the agency must submit a request for it in accordance with section 1070.43(b) of the rule. In response to such a request, the Bureau's General Counsel will decide whether or not to grant access to the requested confidential information as set forth in § 1070.43(b) and in accordance with relevant Bureau guidance, including CFPB Bulletin 12–01.

The Bureau also notes that an agency that receives confidential information in summary form pursuant to § 1070.45(a)(5) is subject to the same Bureau prohibition against further disclosing that information that applies when it receives a complete written copy of that confidential information. *See* 12 CFR 1070.47.

Section 1070.46 Other Disclosures of Confidential Information

Section 1070.46 provides that notwithstanding the other provisions in subpart D that restrict the circumstances under which the CFPB may disclose confidential information, the Director may authorize other disclosures of confidential information to the extent permitted by law.

Section 1070.46(b) authorizes the CFPB to provide prior written notice to the person to whom the confidential information pertains—to the extent that the CFPB deems such notice to be appropriate under the circumstances—that the CFPB intends to disclose confidential information, in accordance with this section.

Section 1070.46(c) clarifies that the authority to disclose confidential information pursuant to this section may be exercised only by the Director or by an individual acting in the capacity of the Director in the absence or unavailability of a Director, such as the Deputy Director (as set forth in section 1011(b)(5)(B) of the Dodd-Frank Act).

Several commenters also expressed concern that § 1070.46 renders meaningless the disclosure restrictions of subpart D by authorizing the Director to disclose confidential information without limitation. To address this concern, commenters propose either eliminating this provision entirely or imposing strict criteria on the Director's discretion. One commenter proposes permitting the Director to authorize discretionary disclosures only where such disclosures are expressly permitted under the Dodd-Frank Act and where there is an actual exigent need for such disclosure in order for the Bureau to perform a statutorily required duty under applicable law.

The Bureau declines to eliminate or substantially modify § 1070.46. As the CPFB noted when it published the interim final rule, the Bureau does not intend to utilize this provision routinely, or as a matter of convenience, to circumvent applicable laws or provisions of the rule that exist elsewhere in subpart D to prohibit or restrict its disclosure of confidential information. Instead, the Bureau intends to use this provision in the same way that other Federal agencies utilize similar catch-all provisions—to account for rare situations in which an unforeseen and exigent need exists to disclose confidential information for purposes or in a manner not otherwise provided for in the rule. To help ensure that the CPFB utilizes § 1070.46 as described, the rule states that the Director must personally authorize in writing disclosures of confidential information that occur pursuant to § 1070.46 and that he or she may not delegate this responsibility to subordinates.

Section 1070.47 Other Rules Regarding the Disclosure of Confidential Information

Section 1070.47(a) declares the Bureau's retained ownership of any confidential information it discloses to Federal or State agencies, to supervised financial institutions, or to other persons as provided in subpart D. It prohibits further disclosures of such information without the Bureau's prior written authorization. It directs recipients of confidential information who receive requests or demands for its further disclosure to refer such requests or demands to the Bureau, afford the Bureau an opportunity to respond or intervene, and to assert legal exemptions or privileges on the Bureau's behalf if so requested. To the extent that requests for confidential information are made pursuant to the FOIA, the Privacy Act, or State law equivalents of those statutes, § 1070.47(a)(3) requires Federal or State agency recipients to refer such requests to the Bureau for its response. As provided by § 1070.47(a)(4), nothing in this section precludes a recipient of confidential information under subpart D from disclosing such information pursuant to a valid Federal court order or a request or demand from a duly authorized committee of the United States Congress. In such cases where disclosure is compulsory, the disclosing party shall use its best efforts to secure a protective order or agreement that maintains the confidentiality of the confidential information disclosed.

Section 1070.47(b) permits the Bureau to impose any additional conditions or limitations that it deems prudent upon the use or disclosure of confidential information by agencies or persons to whom such information has been disclosed pursuant to this subpart.

After the publication of the interim final rule, the Bureau published a notice of proposed rulemaking that proposed an amendment to § 1070.47(c). *See* 77 FR 15286 (Mar. 15, 2012). The amended version of this provision provides that the Bureau's provision of privileged information to another Federal or State agency does not waive any applicable privilege, whether the privilege belongs to the Bureau or any other person.

The Bureau published its final rule on July 5, 2012. *See* 77 FR 39617. In its final rule, the Bureau addressed public comments that it received in response to the notice of proposed rulemaking. Please see that final rule for further information.

The Bureau received several comments about this provision. One commenter argues that the Bureau does not have authority to enforce this regulation to the extent that it applies to confidential information provided to other agencies. To incentivize agencies to abide by this restriction, the commenter suggests that the rule should state that if a party to whom the Bureau provides confidential information leaks it intentionally or otherwise, the Bureau will stop providing confidential information to that party.

Another commenter argues that the Bureau should require third party recipients of confidential information to comply with all applicable laws, including State laws.

To address concerns regarding the enforceability of the interim final rule with respect to State agencies, the Bureau makes several modifications in the final rule.

First, the final rule now requires, in subparagraph (a)(3)(ii), that recipients of confidential information must re-direct all third party requests for that information to the Bureau and not simply those requests filed under the FOIA, the Privacy Act, or State analogues to such laws.

Second, the Bureau modifies subparagraph (a)(3)(ii) to clarify that recipients of confidential information must provide the aforementioned instruction to third party requesters of that information only to the extent that applicable law permits them to do so.

Third, the Bureau modifies subparagraph (a)(4) of the interim final rule to state that nothing in this section precludes compliance with a legally valid and enforceable order of a court of competent jurisdiction rather than, more narrowly, an order of a United States Federal court. The Bureau makes this modification principally to clarify that if a final and enforceable order of a State court requires a recipient of confidential information to disclose that information to a third party, the rule does not preclude the recipient from complying with the order.

Fourth, the Bureau modifies subparagraphs (a)(2) and (a)(5) to make them consistent with § 1070.42 of the rule. Section 1070.42 allows financial institutions that receive copies of confidential supervisory information to further disclose that information to certain other entities and persons. Subparagraph (a)(2) of the interim final rule seemingly precludes such disclosures altogether while subparagraph (a)(5) precludes such disclosures to the extent that they involve removing confidential supervisory information from the premises of financial institutions. The final rule eliminates this unintended result by stating that, except as otherwise permitted by subpart D—rather than by § 1070.47 only—recipients of confidential information may not further disclose confidential information, including by making personal copies of such information and by removing it from the premises of financial institutions.

Section 1070.48 Privileges Not Affected by Disclosure to the CFPB

After the publication of the interim final rule, the Bureau published a notice of proposed rulemaking that proposed to add to the interim final rule a new § 1070.48. *See* 77 FR 15286, 15286 (Mar. 15, 2012). This new section provides that the submission by any person of any information to the Bureau in the course of the Bureau's supervisory or regulatory processes will not waive or otherwise affect any privilege such person may claim with respect to such information under Federal or State law as to any other person or entity.

The Bureau published its final rule on July 5, 2012. *See* 77 FR 39617. In its final rule, the Bureau addressed public comments that it received in response to the notice of proposed rulemaking. Please see that final rule for further information.

Subpart E—The Privacy Act

Section 1070.50 Purpose and Scope; Definitions

Section 1070.50 of the interim final rule sets forth the purpose of subpart E, which is to implement the requirements of the Privacy Act of 1974, 5 U.S.C. 552a (the Privacy Act). Among other things, the Privacy Act requires Federal agencies to grant individuals access to records that agencies maintain about them in systems of records as well as the right to amend or correct such records. Section 1070.50 also defines certain terms that are used throughout subpart E. The Bureau received no comments on the interim final rule. The Bureau adopts the interim final rule without modification.

Section 1070.51 Authority and Responsibilities of the Chief Privacy Officer

Section 1070.51 of the interim final rule authorizes the Chief Privacy Officer of the Bureau to respond to public requests made under the Privacy Act for access to, accounting of, or amendments to Bureau records contained in systems of records. It also authorizes the Chief Privacy Officer to approve the publication and amendment of systems of record notices. Finally, the interim final rule authorizes the Chief Privacy Officer to file any necessary reports required by the Privacy Act. The Bureau received no comments on the interim final rule. The Bureau adopts the interim final rule without modification.

Section 1070.52 Fees

Section 1070.52 of the interim final rule identifies the fees that are associated with processing Privacy Act requests for copies of records submitted pursuant to this subpart. This provision also sets for circumstances in which the Bureau will not charge fees to process Privacy Act requests. The Bureau received no comments on the interim final rule. The Bureau adopts the interim final rule without modification except to correct a typographical error.

Section 1070.53 Requests for Access to Records

Section 1070.53(a) of the interim final rule describes how individuals may request access to Bureau records that pertain to them.

Paragraph (a) states that requests that requests may be made electronically or in paper form and submitted to designated addresses.

Paragraph (b) identifies the required content of Privacy Act requests. Such content must include, among other things, the name of the system of records that the requester believes contains the records requested, or a description of the records sought that is sufficiently specific to enable Bureau personnel to locate the applicable system of records with a reasonable amount of effort. Wherever possible, it should also contain a description of the record sought, including any information that might assist the Bureau in locating it.

Paragraph (c) requires requesters to provide proof of their identity to obtain access to Privacy Act protected records. Such proof includes a photocopy of identification cards or forms that bear the requester's photograph and signature or a statement swearing or affirming the requester's identity. Additional proof may be required in certain circumstances. For example, if a requester seeks records pertaining to another individual in the requester's capacity as that individual's guardian, then the requester must provide proof of guardianship before the Bureau will process the request.

Paragraph (d) states that an individual may request an accounting of previous disclosures of records pertaining to such individual.

The Bureau received no comments on the interim final rule. The Bureau modifies the interim final rule to reflect the new mailing address of the Bureau: 1700 G Street NW., Washington, DC 20552.

Section 1070.54 CFPB Procedures for Responding to a Request for Access

Section 1070.54 of the interim final rule sets forth procedures for the Bureau to follow in responding to a Privacy Act request for records.

Paragraph (a) provides that the Bureau will acknowledge and seek to respond to each request within twenty (20) business days of its receipt.

Paragraph (b) identifies procedures for making requested records available for inspection and copying in the Bureau reading room or mailing or emailing the records directly to the requester.

Paragraph (c) requires the Bureau to inform requesters in writing of its denials of requests. Such notification must include the reasons for denial and procedures for appealing the determination.

The Bureau received no comments on the interim final rule. The Bureau adopts the interim final rule without modification.

Section 1070.55 Special Procedures for Medical Records

Section 1070.55 of the interim final rule sets forth special procedures for the Bureau to apply when responding to Privacy Act requests for medical or psychological records. The Bureau received no comments on the interim final rule. The Bureau modifies the interim final rule to clarify that a physician or other appropriate representative whom a requester designates to receive the Bureau's medical or psychological records that pertain to the requester shall—rather than may—disclose those records to the requester, but that physician or representative may disclose such records in a manner that he or she deems appropriate to prevent or mitigate adverse effects on the requester.

Section 1070.56 Request for Amendment of Records

Section 1070.56(a) of the interim final rule comprises procedures for individuals to follow when making requests for the amendment of Bureau records that concern them. Individuals seeking amendment to a record must submit the request in writing, along with proof of identity (unless such proof was already provided in a related access or amendment request), and submit it, either in paper or electronic form, to the Chief Privacy Officer. The request must identify the relevant system of records and the portion of the record to be amended. The request also must describe the nature and reasons for each requested amendment.

Paragraph (b) states that the requester bears the burden of proving, through relevant and convincing evidence, that the record should be amended because it is not accurate, relevant, timely or complete.

The Bureau received no comments on the interim final rule. The Bureau modifies section 1070.56(b) of the interim final rule to adopt the ''preponderance of the evidence'' standard of proof that the Office of Management and Budget prescribed in its guidance to agencies on the implementation of the Privacy Act. *See* Office of Management and Budget, Privacy Act Implementation: Guidelines and Responsibilities, 40FR 28958–28959 (Jul. 9, 1975).

Section 1070.57 CFPB Review of a Request for Amendment of Records

Section 1070.57 of the interim final rule sets forth procedures for the Bureau to follow in reviewing and responding to a request to amend records pertaining to an individual.

Paragraph (a) requires the Bureau to acknowledge such a request within ten (10) business days after its receipt. The Bureau must make its determination as to whether to grant an amendment request promptly.

Paragraph (b) requires the Bureau to respond to a request for amendment in writing by informing the requester of its determination, and if granted, the steps that it will take to amend the record. If denied, the Bureau must inform the requester of the reasons for denial and of the requester's appeal rights.

The Bureau received no comments on the interim final rule. The Bureau adopts the interim final rule without modification.

Section 1070.58 Appeal of Adverse Determination of Request for Access or Amendment

Section 1070.58 of the interim final rule sets forth procedures for filing appeals of Bureau denials of Privacy Act requests for access to or amendment of records.

Paragraph (a) establishes a requester's right to file appeals of denials of requests for record access or amendment within ten (10) business days after the Bureau notifies the requester that it has denied such requests.

Paragraph (b) requires appellants to file appeals in writing and to submit them, in paper or electronic form, to the General Counsel of the Bureau. Appeals must specify the background of the initial request and explain why the denial of access or amendment was in error.

Paragraph (c) designates the General Counsel of the Bureau to decide appeals. The General Counsel must make his or her determination within thirty (30) business days from the date of his or her receipt of the appeal, unless the General Counsel extends the time for good cause. If the General Counsel denies the appeal, the General Counsel must inform the requester in writing. The denial notification must include the General Counsel's reasons for denying the appeal and describe the requester's right to file a statement of disagreement and to have a court review the appellate determination.

Paragraph (d) sets forth the appellant's right to file a concise statement of disagreement with the General Counsel's denial of an appeal. The Bureau must maintain this statement of disagreement with the record that the requester sought to amend and any disclosure of the record must include a copy of the statement of disagreement. The Bureau also must, where practical and appropriate, provide a copy of the statement of disagreement to prior recipients of the record.

The Bureau received no comments on the interim final rule. The Bureau adopts the interim final rule without modification.

Section 1070.59 Restrictions on Disclosure

Section 1070.59 of the interim final rule states that the Bureau will not disclose any record about an individual contained in a system of records to any person or agency without the prior written consent of that individual unless the Privacy Act authorizes it to do so. Authorized disclosures include those that are compatible with so-called ''routine uses'' that the Bureau publishes in the **Federal Register** as part of its System of Records Notices. Copies of the Bureau's System of Record Notices are available on the Bureau's Web site, at *http://www.consumerfinance.gov*. The Bureau received no comments on the interim final rule. The Bureau adopts the interim final rule without modification.

Section 1070.60 Exempt Records

Section 1070.60 of the interim final rule lists certain Bureau systems of records that are exempt, pursuant to section (k)(2) of the Privacy Act, from the record access rights and certain other rights and obligations set forth in this subpart and in the Privacy Act itself. These systems of records are exempt insofar as they contain investigatory systems compiled for law enforcement purposes.

After the publication of the interim final rule, the Bureau published a notice of proposed rulemaking that proposed to add to this section of the rule a new exempt system of records: CFPB .005—Consumer Response System. *See* 77 FR 64241 (Oct. 19, 2012).

The Bureau received no comments on the interim final rule or on the notice of proposed rulemaking. The Bureau adopts the interim final rule and the proposed rule without modification except to correct a drafting error.

Section 1070.61 Training; Rules of Conduct; Penalties for Non-Compliance

Section 1070.61(a) of the interim final rule requires the Chief Privacy Officer to institute a training program to instruct Bureau employees and contractors as to their duties and responsibilities under the Privacy Act and the regulations of this subpart.

Paragraph (b) sets forth standards of conduct applicable to Bureau employees and contractors regarding compliance with the Privacy Act and the regulations of this subpart.

The Bureau received no comments on the interim final rule. The Bureau adopts the interim final rule without modification except to correct drafting and typographical errors.

Section 1070.62 Preservation of Records

Section 1070.62 of the interim final rule requires the Bureau to preserve all correspondence relating to requests received under this part, as well as records responsive to such requests, until Federal records laws or record retention schedules approved by the National Archives and Records Administration authorizes the disposition or destruction of such records. The interim final rule also instructs Bureau employees not to dispose of such records while they are the subject of a pending request, appeal, proceeding, or lawsuit.

One commenter suggests that the Bureau should modify § 1070.62 of the interim final rule to provide that records will not be disposed of ''or destroyed'' while they are subject to a pending request, appeal, proceeding, or lawsuit.

The Bureau agrees with the commenter that Bureau employees should be instructed to neither dispose of nor destroy correspondence that relates to or records that are responsive to requests that the Bureau receives under this subpart while they are subject to a pending request, appeal, proceeding, or lawsuit.

Section 1070.63 Use and Collection of Social Security Numbers

Section 1070.63 of the interim final rule requires the Bureau to inform employees that in collecting information from individuals, employees may not deny such individuals any rights, benefits, or privileges arising from such individuals' refusals to disclose social security numbers to the Bureau unless the collection of such numbers is authorized by law.

In requesting social security numbers from individuals, the Bureau must inform individuals whether the provision of such numbers is mandatory or voluntary, the legal authority that authorizes the collection of such numbers, and the uses that the Bureau will make of the numbers.

The Bureau received no comments on the interim final rule. The Bureau adopts the interim final rule without modification.

V. Section 1022(b)(2)(A) of the Dodd-Frank Act

In developing the final rule, the Bureau has considered potential benefits, costs, and impacts, and has consulted or offered to consult with the prudential regulators, including with regard to consistency with any prudential, market, or systemic objectives administered by such agencies.[8]

The analysis considers the benefits, costs, and impacts of the key provisions of the rule against a pre-statutory baseline; that is, the analysis evaluates the benefits, costs, and impacts of the relevant statutory provisions and the regulations combined.[9]

Subpart C of the final rule sets forth procedures by which the public, including consumers and covered persons, may serve summons, complaints, subpoenas, and other legal process, demands, and requests upon the Bureau. The rule imposes special procedural requirements for those who seek to serve third party subpoenas upon the Bureau in accordance with *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951). These requirements may increase the time and burden associated with obtaining records of the Bureau in response to such subpoenas.

Subpart D of the final rule, which restricts the circumstances under which the Bureau may disclose to the public or share with other agencies certain categories of confidential information, benefits consumers and covered persons to the extent that the confidential information that the rule protects is derived from or pertains to consumers or covered persons. For example, the rule protects consumers' privacy by restricting the Bureau's authority to disclose publicly personally-identifiable complaint information that consumers submit to the Bureau. The rule also protects the financial and reputational interests of covered persons by limiting the extent to which the Bureau may publicly disclose supervisory and law enforcement information about them.

To the extent that the rule requires or authorizes the Bureau to share confidential information, the rule also has benefits for consumers and covered persons. Consumers may benefit when the Bureau shares complaint information to facilitate resolution of consumer complaints. They may also benefit when the Bureau shares supervisory information with other financial regulatory agencies to promote compliance by covered persons with consumer financial laws. Similarly, consumers may benefit when the Bureau shares its investigatory information with other law enforcement agencies to aid efforts to prevent and remedy harms to consumers caused by conduct that violates consumer financial law.

There is a benefit to covered persons when the Bureau shares supervisory information with other regulatory agencies. Information exchange among regulatory agencies permits the Bureau and these agencies to conduct joint supervisory examinations of covered persons rather than separate examinations, thereby reducing regulatory burdens to covered persons.

This rule may entail certain costs to covered persons. As one commenter to the interim final rule argues, the information sharing provisions of subpart D of the rule may increase the volume and costs of litigation for covered persons whose information the Bureau will share with other agencies and which such agencies may use as bases for administrative or judicial actions against covered persons. To the extent that such costs occur, the Bureau believes that in most cases, these costs would be associated with concomitant benefits to consumers from the prevention or remedy of harms associated with violations of law by covered persons.[10]

One commenter also contends that the information sharing practices that the rule prescribes will result in a waiver of legal privileges that otherwise protect this information from disclosure to third parties, thereby rendering such information vulnerable to subpoenas and discovery requests. Although the Bureau believes that this concern is unwarranted, the Bureau has taken action since it issued the interim final rule to mitigate this potential cost. On July 5, 2012, the Bureau modified § 1070.47(c) of the interim final rule and added a new § 1070.48 to clarify that the provision by a covered person of confidential information to the Bureau and the Bureau's disclosure of such information to another agency does not waive legal privileges that otherwise protect such information from disclosure. *See* 77 FR 39617.

One commenter suggests that § 1070.46 of the rule imposes costs upon covered persons to the extent that it authorizes the Director of the Bureau to disclose their confidential information to the public notwithstanding other disclosure restrictions set forth in subpart D. To the extent that the Director exercises his authority under § 1070.46 to disclose confidential information, costs may indeed ensue to affected covered persons. However, at most only very few covered persons might actually face such a cost, because the circumstances are limited in which the Director can and will exercise this authority. To ensure that the Bureau will resort to § 1070.46 only in limited circumstances, the provision's disclosure authority is exercisable only by the Director himself. The Director does not intend to exercise his authority

[8] Section 1022(b)(2)(A) of the Dodd-Frank Act addresses the consideration of the potential benefits and costs of regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas. Section 1022(b)(2)(B) directs the Bureau to consult, before and during the rulemaking, with appropriate prudential regulators or other Federal agencies, regarding consistency with objectives those agencies administer. The manner and extent to which these provisions apply to a rulemaking of this kind that does not establish standards of conduct, and to regulatory provisions that are compelled by statutory changes, is unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the described analyses and consultations.

[9] The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits and costs and an appropriate baseline. The Bureau, as a matter of discretion, has chosen to describe a broader range of potential effects to more fully inform the rulemaking.

[10] The Bureau notes that it has taken steps since it issued the interim final rule to limit the circumstances in which it shares supervisory information with agencies that are not engaged in supervisory activities, including State attorneys general. In January 2012, the Bureau issued Bulletin 12–01, which states that the Bureau will not share confidential supervisory information routinely with such agencies and will only share such information after scrutinizing factors that include the significance of the law enforcement interest at stake and the impact on the integrity of the supervisory process. This Bulletin should limit litigation costs to covered persons that might otherwise arise from the final rule.

under § 1070.46 except in unforeseen and exigent circumstances. Moreover, § 1070.46 states that the Bureau may notify covered persons of the Director's intentions to disclose confidential information pursuant to 1070.46; such notice would enable covered persons to seek appropriate relief if they believe that the Director's disclosure of confidential information would be contrary to law.

The CFPB does not expect that the final rule will have an appreciable impact on consumers' access to consumer financial products or services. The final rule does not have a unique impact on rural consumers. The final rule also has no unique impact on insured depository institutions or insured credit unions with less than $10 billion in assets as described in section 1026(a) of the Dodd-Frank Act.

VI. Procedural Requirements

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (the RFA), requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations, unless the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The undersigned so certifies. The rule does not impose any obligations or standards of conduct for purposes of analysis under the RFA, and it therefore does not give rise to a regulatory compliance burden for small entities.

Finally, the Bureau has determined that this final rule does not impose any new recordkeeping, reporting, or disclosure requirements on members of the public that would be collections of information requiring approval under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

List of Subjects in 12 CFR Part 1070

Confidential business information, Consumer protection, Freedom of information, Privacy.

Authority and Issuance

For the reasons set forth in the preamble, the Bureau revises part 1070 to read as follows:

PART 1070—DISCLOSURE OF RECORDS AND INFORMATION

Subpart A—General Provisions and Definitions

Sec.

Subpart B—Freedom of Information Act

Sec.

Subpart C—Disclosure of CFPB Information in Connection With Legal Proceedings

Sec.

Subpart D—Confidential Information

Sec.

Subpart E—Privacy Act

Sec.

Authority: 12 U.S.C. 5481 et seq.; 5 U.S.C. 552; 5 U.S.C. 552a; 18 U.S.C. 1905; 18 U.S.C. 641; 44 U.S.C. ch. 30; 5 U.S.C. 301.

Subpart A—General Provisions and Definitions

§ 1070.1 Authority, purpose, and scope.

(a) *Authority.* (1) This part is issued by the Bureau of Consumer Financial Protection, an independent Bureau within the Federal Reserve System, pursuant to the Consumer Financial Protection Act of 2010, 12 U.S.C. 5481 et seq.; the Freedom of Information Act, 5 U.S.C. 552; the Privacy Act of 1974, 5 U.S.C. 552a; the Federal Records Act, 44 U.S.C. 3101; the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401; the Trade Secrets Act, 18 U.S.C. 1905; 18 U.S.C. 641; and any other applicable law that establishes a basis for the exercise of governmental authority by the CFPB.

(2) This part establishes mechanisms for carrying out the CFPB's statutory responsibilities under the statutes in paragraph (a)(1) of this section to the extent those responsibilities require the disclosure, production, or withholding of information. In this regard, the CFPB has determined that the CFPB, and its delegates, may disclose information of the CFPB, in accordance with the procedures set forth in this part, whenever it is necessary or appropriate to do so in the exercise of any of the CFPB's authority. The CFPB has determined that all such disclosures, made in accordance with the rules and procedures specified in this part, are authorized by law.

(b) *Purpose and scope.* This part contains the CFPB's rules relating to the disclosure of records and information generated by and obtained by the CFPB.

(1) Subpart A contains general provisions and definitions used in this part.

(2) Subpart B implements the Freedom of Information Act, 5 U.S.C. 552.

(3) Subpart C sets forth the procedures with respect to subpoenas, orders, or other requests for CFPB information in connection with legal proceedings.

(4) Subpart D provides for the protection of confidential information and procedures for sharing confidential information with supervised institutions, government agencies, and others in certain circumstances.

(5) Subpart E implements the Privacy Act of 1974, 5 U.S.C. 552a.

§ 1070.2 General definitions.

For purposes of this part:

(a) *Business day* means any day except Saturday, Sunday or a legal Federal holiday.

(b) *CFPB* means the Bureau of Consumer Financial Protection.

(c) *Chief FOIA Officer* means the Chief Operating Officer of the CFPB, or any CFPB employee to whom the Chief Operating Officer has delegated authority to act under this part.

(d) *Chief Operating Officer* means the Chief Operating Officer of the CFPB, or any CFPB employee to whom the Chief Operating Officer has delegated authority to act under this part.

(e) *Civil investigative demand material* means any documentary material, written report, or answers to questions, tangible thing, or transcript of oral testimony received by the CFPB in any form or format pursuant to a civil investigative demand, as those terms are set forth in 12 U.S.C. 5562, or received by the CFPB voluntarily in lieu of a civil investigative demand.

(f) *Confidential information* means confidential consumer complaint information, confidential investigative information, and confidential supervisory information, as well as any other CFPB information that may be exempt from disclosure under the Freedom of Information Act pursuant to 5 U.S.C. 552(b). Confidential information does not include information contained in records that have been made publicly available by the CFPB or information that has otherwise been publicly disclosed by an employee with the authority to do so.

(g) *Confidential consumer complaint information* means information received or generated by the CFPB, pursuant to 12 U.S.C. 5493 and 5534, that comprises or documents consumer complaints or inquiries concerning financial institutions or consumer financial products and services and responses thereto, to the extent that such information is exempt from disclosure pursuant to 5 U.S.C. 552(b).

(h) *Confidential investigative information* means:

(1) Civil investigative demand material; and

(2) Any documentary material prepared by, on behalf of, received by, or for the use by the CFPB or any other Federal or State agency in the conduct of an investigation of or enforcement action against a person, and any information derived from such documents.

(i)(1) *Confidential supervisory information* means:

(i) Reports of examination, inspection and visitation, non-public operating, condition, and compliance reports, and any information contained in, derived from, or related to such reports;

(ii) Any documents, including reports of examination, prepared by, or on behalf of, or for the use of the CFPB or any other Federal, State, or foreign government agency in the exercise of supervisory authority over a financial institution, and any information derived from such documents;

(iii) Any communications between the CFPB and a supervised financial institution or a Federal, State, or foreign government agency related to the CFPB's supervision of the institution;

(iv) any information provided to the CFPB by a financial institution to enable the CFPB to monitor for risks to consumers in the offering or provision of consumer financial products or services, or to assess whether an institution should be considered a covered person, as that term is defined by 12 U.S.C. 5481, or is subject to the CFPB's supervisory authority; and/or

(v) Information that is exempt from disclosure pursuant to 5 U.S.C. 552(b)(8).

(2) *Confidential supervisory information* does not include documents prepared by a financial institution for its own business purposes and that the CFPB does not possess.

(j) *Director* means the Director of the CFPB or his or her designee, or a person authorized to perform the functions of the Director in accordance with law.

(k) *Employee* means all current employees or officials of the CFPB, including employees of contractors and any other individuals who have been appointed by, or are subject to the supervision, jurisdiction, or control of the Director, as well as the Director. The procedures established within this part also apply to former employees where specifically noted.

(l) *Financial institution* means any person involved in the offering or provision of a ''financial product or service,'' including a ''covered person'' or ''service provider,'' as those terms are defined by 12 U.S.C. 5481.

(m) *General Counsel* means the General Counsel of the CFPB or any CFPB employee to whom the General Counsel has delegated authority to act under this part.

(n) *Person* means an individual, partnership, company, corporation, association (incorporated or unincorporated), trust, estate, cooperative organization, or other entity.

(o) *Report of examination* means the report prepared by the CFPB concerning the examination or inspection of a supervised financial institution.

(p) *State* means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, or the United States Virgin Islands or any Federally recognized Indian tribe, as defined by the Secretary of the Interior under section 104(a) of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a–1(a)), and includes any political subdivision thereof.

(q) *Supervised financial institution* means a financial institution that is or that may become subject to the CFPB's supervisory authority.

§ 1070.3 Custodian of records; certification; alternative authority.

(a) *Custodian of records.* The Chief Operating Officer is the official custodian of all records of the CFPB, including records that are in the possession or control of the CFPB or any CFPB employee.

(b) *Certification of record.* The Chief Operating Officer may certify the authenticity of any CFPB record or any copy of such record, for any purpose, and for or before any duly constituted Federal or State court, tribunal, or agency.

(c) *Alternative authority.* Any action or determination required or permitted to be done by the Chief Operating Officer may be done by any employee who has been duly designated for this purpose by the Chief Operating Officer.

§ 1070.4 Records of the CFPB not to be otherwise disclosed.

Except as provided by this part, employees or former employees of the CFPB, or others in possession of a record of the CFPB that the CFPB has not already made public, are prohibited from disclosing such records, without authorization, to any person who is not an employee of the CFPB.

Subpart B—Freedom of Information Act

§ 1070.10 General.

This subpart contains the regulations of the CFPB implementing the Freedom of Information Act (the FOIA), 5 U.S.C. 552, as amended. These regulations set forth procedures for requesting access to records maintained by the CFPB. These regulations should be read together with the FOIA, the 1987 Office of Management and Budget Guidelines for FOIA Fees, the CFPB's Privacy Act regulations set forth in subpart E, and the FOIA Web page on the CFPB's Web site, *http://www.consumerfinance.gov,* which provide additional information about this topic.

§ 1070.11 Information made available; discretionary disclosures.

(a) *In general.* The FOIA provides for public access to information and records developed or maintained by Federal agencies. Generally, the FOIA divides agency information into three major categories and provides methods by which each category of information is to be made available to the public. The three major categories of information are as follows:

(1) Information required to be published in the **Federal Register** (see § 1070.12 of this subpart);

(2) Information required to be made available for public inspection and copying or, in the alternative, to be published and offered for sale (see § 1070.13 of this subpart); and

(3) Information required to be made available to any member of the public upon specific request (see *§§* 1070.14 through 1070.22 of this subpart).

(b) *Discretionary disclosures.* Even though a FOIA exemption may apply to the information or records requested, the CFPB may, if not precluded by law, elect under the circumstances not to apply the exemption. The fact that the exemption is not applied by the CFPB in response to a particular request shall have no precedential significance in processing other requests, but is merely an indication that, in the processing of the particular request, the CFPB finds no necessity for applying the exemption.

(c) *Disclosures of records frequently requested.* Subject to the application of the FOIA exemptions and exclusions (5 U.S.C. 552(b) and (c)), the CFPB shall make publicly available, as provided by § 1070.13 of this subpart, all records regardless of form or format, which have been released previously to any person under 5 U.S.C. 552(a)(3) and §§ 1070.14 through 1070.22 of this subpart, and which the CFPB determines have become or are likely to become the subject of subsequent requests for substantially the same records. When the CFPB receives three (3) or more requests for substantially the same records, then the CFPB shall also make the released records publicly available.

§ 1070.12 Publication in the Federal Register.

(a) *Requirement.* The CFPB shall separately state, publish and maintain current in the **Federal Register** for the guidance of the public the following information:

(1) Descriptions of its central and field organization and the established place at which, the persons from whom, and the methods whereby, the public may obtain information, make submissions or requests, or obtain decisions;

(2) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the CFPB; and

(5) Each amendment, revision, or repeal of matters referred to in paragraphs (a)(1) through (4) of this section.

(b) *Exceptions.* Publication of the information under clause (a) of this subpart shall be subject to the application of the FOIA exemptions and exclusions (5 U.S.C. 552(b) and (c)) and the limitations provided in 5 U.S.C. 552(a)(1).

§ 1070.13 Public inspection and copying.

(a) *In general.* Subject to the application of the FOIA exemptions and exclusions (5 U.S.C. 552(b) and (c)), the CFPB shall, in conformance with 5 U.S.C. 552(a)(2), make available for public inspection and copying, including by posting on the CFPB's Web site, *http://www.consumerfinance.gov,* or, in the alternative, promptly publish and offer for sale the following information:

(1) Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases;

(2) Those statements of policy and interpretations which have been adopted by the CFPB but are not published in the **Federal Register**;

(3) Its administrative staff manuals and instructions to staff that affect a member of the public;

(4) Copies of all records made publicly available pursuant to § 1070.11 of this subpart; and

(5) A general index of the records referred to in paragraph (a)(4) of this section.

(b) *Information made available online.* For records required to be made available for public inspection and copying pursuant to 5 U.S.C. 552(a)(2) (paragraphs (a)(1) through (4) of this section), as soon as practicable, the CFPB shall make such records available on its e-FOIA Library, located at *http://www.consumerfinance.gov.*

(c) *Record availability at the on-site e-FOIA Library.* Any member of the public may, upon request, access the CFPB's e-FOIA Library via a computer terminal at 1700 G Street NW., Washington, DC 20552. Such a request may be made by electronic means as set forth on the CFPB's Web site, *http://www.consumerfinance.gov*, or in writing, to the Chief FOIA Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552. The request must indicate a preferred date and time for the requested access. The CFPB reserves the right to arrange a different date and time with the requester, if necessary.

(d) *Redaction of identifying details.* To prevent a clearly unwarranted invasion of personal privacy, the CFPB may redact identifying details contained in any matter described in paragraphs (a)(1) through (4) of this section before making such matters available for inspection or publication. The justification for the redaction shall be explained fully in writing, and the extent of such redaction shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in 5 U.S.C. 552(b) under which the redaction is made. If technically feasible, the extent of the redaction shall be indicated at the place in the record where the redaction is made.

§ 1070.14 Requests for CFPB records.

(a) *In general.* Subject to the application of the FOIA exemptions and exclusions (5 U.S.C. 552(b) and (c)), the CFPB shall promptly make its records available to any person pursuant to a request that conforms to the rules and procedures of this section.

(b) *Form of request.* A request for records of the CFPB shall be made in writing or by electronic means.

(1) If a request is made in writing, it shall be addressed to the Chief FOIA Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552. The request shall be labeled ''Freedom of Information Act Request.''

(2) If a request is made by electronic means, it shall be submitted as set forth on the CFPB's Web site, *http://www.consumerfinance.gov*. The request shall be labeled ''Freedom of Information Act Request.''

(c) *Content of request.* (1) In order to ensure the CFPB's ability to respond in a timely manner, a FOIA request should describe the records that the requester seeks in sufficient detail to enable CFPB personnel to locate them with a reasonable amount of effort. Whenever possible, the request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. If known, the requester should include any file designations or descriptions for the records requested. As a general rule, the more specific the requester is about the records or type of records requested, the more likely the CFPB will be able to locate those records in response to the request;

(2) In order to ensure the CFPB's ability to communicate effectively with the requester, a request should include contact information for the requester, including the name of the requester and, to the extent available, a mailing address, telephone number, and email address at which the CFPB may contact the requester regarding the request;

(3) The request should state whether the requester wishes to inspect the records or desires to receive an electronic copy or have a copy made and furnished without first inspecting the records;

(4) For the purpose of determining any fees that may apply to processing a request, a requester should indicate in the request whether the requester is a commercial user, an educational institution, non-commercial scientific institution, representative of the news media, governmental entity, or ''other'' requester, as those terms are defined in § 1070.22(b) of this subpart, and the basis for claiming that fee category. Requesters may seek assistance in determining the appropriate fee category by contacting the CFPB's FOIA Public Liaison at the telephone number listed on the CFPB's Web site, *http://www.consumerfinance.gov*. The CFPB will use any information provided to the FOIA Public Liaison solely for the purpose of determining the appropriate fee category that applies to the requester;

(5) If a requester seeks a waiver or reduction of fees associated with processing a request, then the request shall include a statement to that effect as is required by § 1070.22(e) of this subpart. Any request that does not seek a waiver or reduction of fees constitutes an agreement of the requester to pay any and all fees (of up to $25) that may apply to the request, as otherwise set forth in § 1070.22 of this subpart, except that the requester may specify in the request an upper limit (of not less than $25) that the requester is willing to pay to process the request; and

(6) If a requester seeks expedited processing of a request, then the request must include a statement to that effect as is required by § 1070.17 of this subpart.

(d) *Perfected requests; effect of request deficiencies.* For purposes of computing its deadline to respond to a request, the CFPB will deem itself to have received a request only if, and on the date that, it receives a request that contains substantially all of the information required by and that otherwise conforms with paragraphs (b) and (c) of this section. The CFPB need not accept a request, process a request, or be bound by any deadlines in this subpart for processing a request that fails to conform, in any material respect, to the requirements of paragraphs (b) and (c) of this section. If a request is deficient in any material respect, then the CFPB may return it to the requester and if it does so, it shall advise the requester in what respect the request is deficient, and what additional information is needed to respond to the request. The requester may then amend or resubmit the request. A determination by the CFPB that a request is deficient in any respect is not a denial of a request for records and such determinations are not subject to appeal. If a requester fails to respond to a CFPB notification that a request is deficient within thirty (30) days of the CFPB's notification, the CFPB will deem the request withdrawn.

(e) *Requests by an individual for CFPB records pertaining to that individual.* An individual who wishes to inspect or obtain copies of records of the Bureau that pertain to that individual shall file a request in accordance with subpart E of these rules.

(f) *Requests for CFPB records pertaining to another individual.* Where a request for records pertains to a third party, a requester may receive greater access by submitting either a notarized authorization signed by that individual or a declaration by that individual made in compliance with the requirements set forth in 28 U.S.C. 1746 authorizing disclosure of the records to the requester, or submits proof that the individual is deceased (e.g., a copy of a death certificate or an obituary). The CFPB may require a requester to supply additional information if necessary in order to verify that a particular individual has consented to disclosure.

§ 1070.15 Responsibility for responding to requests for CFPB records.

(a) *In general.* In determining which records are responsive to a request, the CFPB ordinarily will include only records in its possession as of the date the CFPB begins its search for them. If any other date is used, the CFPB shall inform the requester of that date.

(b) *Authority to grant or deny requests.* The Chief FOIA Officer shall be authorized to grant or deny any request for a record of the CFPB.

(c) *Consultations and referrals.* (1) When a requested record has been created by an agency other than the CFPB, the CFPB shall refer the record to the originating agency for a direct response to the requester.

(2) When a FOIA request is received for a record created by the CFPB that includes information originated by another agency, the CFPB shall consult the originating agency for review and recommendation on disclosure. The CFPB shall not release any such records without prior consultation with the originating agency.

(d) *Notice of referral.* Whenever the CFPB refers all or any part of the responsibility for responding to a request to another agency, it will notify the requester of the referral and inform the requester of the name of each agency to which the request has been referred, in whole or in part.

§ 1070.16 Timing of responses to requests for CFPB records.

(a) *In general.* Except as set forth in paragraphs (b) through (d) of this section, and § 1070.17 of this subpart, the CFPB shall respond to requests according to their order of receipt.

(b) *Multitrack processing.* (1) The CFPB may establish separate tracks to process simple and complex requests. The CFPB may assign a request to the simple or complex track(s) based on the amount of work and/or time needed to process the request. The CFPB shall process requests in each track based on the date the request was perfected in accordance with *§* 1070.14(d).

(2) The CFPB may provide a requester in its complex track with an opportunity to limit the scope of the request to

qualify for faster processing within the specified limits of the simple track(s).

(c) *Time period for responding to requests for records.* Ordinarily, the CFPB shall have twenty (20) business days from when a request is received by the CFPB to determine whether to grant or deny a request for records. The twenty (20) business day time period set forth in this paragraph shall not be tolled by the CFPB except that the CFPB may:

(1) Make one reasonable demand to the requester for clarifying information about the request and toll the twenty (20) business day time period while it awaits the clarifying information; or

(2) Toll the twenty (20) business day time period while it awaits clarification from or addresses any dispute with the requester regarding the assessment of fees.

(d) *Unusual circumstances.* (1) Where the CFPB determines that due to unusual circumstances it cannot respond either to a request within the time period set forth in paragraph (c) of this section or to an appeal within the time period set forth in § 1070.21 of this subpart, the CFPB may extend the applicable time periods by informing the requester in writing of the unusual circumstances and of the date by which the CFPB expects to complete its processing of the request or appeal. Any extension or extensions of time with respect to a request or an appeal shall not cumulatively total more than ten (10) business days. However, if the CFPB determines that it needs additional time beyond a ten (10) business day extension to process the request or appeal, then the CFPB shall notify the requester and provide the requester with an opportunity to limit the scope of the request or appeal or to arrange for an alternative time frame for processing the request or appeal or a modified request or appeal. The requester shall retain the right to define the desired scope of the request or appeal, as long as it meets the requirements contained in this subpart.

(2) As used in this paragraph, ''unusual circumstances'' means:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or more CFPB offices having substantial subject matter interest therein.

§ 1070.17 Requests for expedited processing.

(a) *In general.* The CFPB shall process a request on an expedited basis whenever a requester demonstrates a compelling need for expedited processing in accordance with the requirements of this paragraph or in other cases that the CFPB deems appropriate.

(b) *Form and content of a request for expedited processing.* A request for expedited processing shall be made as follows:

(1) A request for expedited processing shall be made in writing or by electronic means and submitted as part of a request for records in accordance with section 1070.14(b). When a request for records includes a request for expedited processing, the request shall be labeled ''Expedited Processing Requested.''

(2) A request for expedited processing shall contain a statement that demonstrates a compelling need for the requester to obtain expedited processing of the requested records. A ''compelling need'' is defined as follows:

(i) Failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. The requester shall fully explain the circumstances warranting such an expected threat so that the CFPB may make a reasoned determination that a delay in obtaining the requested records could pose such a threat; or

(ii) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal government activity. A person ''primarily engaged in disseminating information'' does not include individuals who are engaged only incidentally in the dissemination of information. The standard of ''urgency to inform'' requires that the records requested pertain to a matter of current exigency to the American public and that delaying a response to a request for records would compromise a significant recognized interest to and throughout the American general public. The requester must adequately explain the matter or activity and why the records sought are necessary to be provided on an expedited basis.

(3) The requester shall certify the written statement that purports to demonstrate a compelling need for expedited processing to be true and correct to the best of the requester's knowledge and belief. The certification must be in the form prescribed by 28 U.S.C. 1746: ''I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on [date].'' The requester shall mail or submit electronically a copy of such written certification to the Chief FOIA Officer as set forth in § 1070.14(b) of this subpart. The CFPB may waive this certification requirement in appropriate circumstances.

(c) *Determinations of requests for expedited processing.* Within ten (10) calendar days of its receipt of a request for expedited processing, the CFPB shall decide whether to grant it and shall notify the requester of the determination in writing.

(d) *Effect of granting requests for expedited processing.* If the CFPB grants a request for expedited processing, then the CFPB shall give the expedited request priority over non-expedited requests and shall process the expedited request as soon as practicable. The CFPB may assign expedited requests to their own simple and complex processing tracks based upon the amount of work and/or time needed to process them. Within each such track, an expedited request shall be processed in the order of its receipt.

(e) *Appeals of denials of requests for expedited processing.* If the CFPB denies a request for expedited processing, then the requester shall have the right to submit an appeal of the denial determination in accordance with § 1070.21 of this subpart. The CFPB shall communicate this appeal right as part of its written notification to the requester denying expedited processing. The requester shall label its appeal request ''Appeal for Expedited Processing.'' The CFPB shall act expeditiously upon an appeal of a denial of a request for expedited processing.

§ 1070.18 Responses to requests for CFPB records.

(a) *Acknowledgements of requests.* Upon receipt of a perfected request, the CFPB will assign to the request a unique tracking number. The CFPB will send an acknowledgement letter to the requester by mail or email within ten (10) calendar days of receipt of the request. The acknowledgment letter will contain the following information:

(1) The applicable request tracking number;

(2) The date of receipt of the request, as determined in accordance with section 1070.14(d) of this subpart, as well as the date when the requester may expect a response;

(3) A brief statement identifying the subject matter of the request; and

(4) A confirmation, with respect to any fees that may apply to the request pursuant to § 1070.22 of this subpart, that the requester has sought a waiver or reduction in such fees, has agreed to pay any and all applicable fees, or has specified an upper limit (of not less than $25) that the requester is willing to pay in fees to process the request.

(b) *Initial determination to grant or deny a request.* (1) The officer designated in § 1070.15(b) to this subpart, or his or her delegate, shall make initial determinations either to grant or to deny in whole or in part requests for records.

(2) If the request is granted in full or in part, and if the requester requests a copy of the records requested, then a copy of the records shall be mailed or emailed to the requester in the requested format, to the extent the records are readily producible in the requested format. The CFPB shall also send the requester a statement of the applicable fees, either at the time of the determination or shortly thereafter.

(3) In the case of a request for inspection, the requester shall be notified in writing of the determination, when and where the requested records may be inspected, and of the fees incurred in complying with the request. The CFPB shall then promptly make the records available for inspection at the time and place stated, in a manner that will not interfere with CFPB's operations and will not exclude other persons from making inspections. The requester shall not be permitted to remove the records from the room where inspection is made. If, after making inspection, the requester desires copies of all or a portion of the requested records, copies shall be furnished upon payment of the established fees prescribed by § 1070.22 of this subpart. Fees may be charged for search and review time as stated in § 1070.22 of this subpart.

(4) If it is determined that the request for records should be denied in whole or in part, the requester shall be notified by mail or by email. The letter of notification shall:

(i) State the exemptions relied upon in denying the request;

(ii) If technically feasible, indicate the amount of information deleted and the exemptions under which the deletion is made at the place in the record where such deletion is made (unless providing such indication would harm an interest protected by the exemption relied upon to deny such material);

(iii) Set forth the name and title or position of the responsible official;

(iv) Advise the requester of the right to administrative appeal in accordance with § 1070.21 of this subpart; and

(v) Specify the official or office to which such appeal shall be submitted.

(5) If it is determined, after a reasonable search for records, that no responsive records have been found to exist, the requester shall be notified in writing or by email. The notification shall also advise the requester of the right to administratively appeal the CFPB's determination that no responsive records exist (*i.e.,* to challenge the adequacy of the CFPB's search for responsive records) in accordance with § 1070.21 of this subpart. The response shall specify the official or office to which the appeal shall be submitted for review.

§ 1070.19 Classified information.

Whenever a request is made for a record containing information that another agency has classified, or which may be appropriate for classification by another agency under Executive Order 13526 or any other executive order concerning the classification of information, the CFPB shall refer the responsibility for responding to the request to the classifying or originating agency, as appropriate.

§ 1070.20 Requests for business information provided to the CFPB.

(a) *In general.* Business information provided to the CFPB by a business submitter shall not be disclosed pursuant to a FOIA request except in accordance with this section.

(b) *Definitions.* For purposes of this section:

(1) *Business information* means commercial or financial information obtained by the CFPB from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(2) *Submitter* means any person from whom the CFPB obtains business information, directly or indirectly. The term includes, without limitation, corporations, State, local, and tribal governments, and foreign governments.

(c) *Designation of business information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4 of the FOIA. These designations will expire ten (10) years after the date of the submission unless the submitter requests otherwise and provides justification for, a longer designation period.

(d) *Notice to submitters.* The CFPB shall provide a submitter with prompt written notice of receipt of a request or appeal encompassing its business information whenever required in accordance with paragraph (e) of this section. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions of records containing the business information. When notification of a voluminous number of submitters is required, notification may be made by posting or publishing the notice in a place reasonably likely to accomplish it.

(e) *When notice is required.* (1) The CFPB shall provide a submitter with notice of receipt of a request or appeal whenever:

(i) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(ii) The CFPB has reason to believe that the information may be protected from disclosure under Exemption 4.

(2) The notice requirements of this paragraph shall not apply if:

(i) The CFPB determines that the information is exempt under the FOIA;

(ii) The information lawfully has been published or otherwise made available to the public;

(iii) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600 (3 CFR, 1988 Comp., p. 235); or

(iv) The designation made by the submitter under paragraph (e)(1)(i) of this section appears obviously frivolous, except that, in such a case, the CFPB shall, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(f) *Opportunity to object to disclosure.* (1) Through the notice described in paragraph (d) of this section, the CFPB shall afford a submitter ten (10) business days from the date of the notice to provide the CFPB with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the FOIA and, in the case of Exemption 4, shall demonstrate why the information is considered to be a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified in it, the submitter shall be considered to have no objection to disclosure of the information. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(2) When notice is given to a submitter under this section, the requester shall be advised that such notice has been given to the submitter. The requester shall be further advised that a delay in responding to the request may be considered a denial of access to records and that the requester may proceed with an administrative appeal or seek judicial review, if appropriate. However, the requester will be invited to agree to a voluntary extension of time so that the CFPB may review the submitter's objection to disclose, if any.

(g) *Notice of intent to disclose.* The CFPB shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever the CFPB decides to disclose business information over the objection of a submitter, the CFPB shall forward to the submitter a written notice which shall include:

(1) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date which is not less than ten (10) business days after the notice of the final decision to release the requested information has been mailed to the submitter. Except as otherwise prohibited by law, a copy of the disclosure notice shall be forwarded to the requester at the same time.

(h) *Notice to submitter of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information, the CFPB shall promptly notify the submitter of that business information of the existence of the suit.

(i) *Notice to requester of business information.* The CFPB shall notify a requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

§ 1070.21 Administrative appeals.

(a) *Grounds for administrative appeals.* A requester may appeal an initial determination of the CFPB, including for the following reasons:

(1) To deny access to records in whole or in part (as provided in § 1070.18(b) of this subpart);

(2) To assign a particular fee category to the requestor (as provided in § 1070.22(b) of this subpart);

(3) To deny a request for a reduction or waiver of fees (as provided in § 1070.22(e) of this subpart);

(4) That no records exist that are responsive to the request (as provided in § 1070.18(b) of this subpart); or

(5) To deny a request for expedited processing (as provided in § 1070.17(e) of this subpart).

(b) *Time limits for filing administrative appeals.* An appeal, other than an appeal of a denial of expedited processing, must be postmarked or submitted electronically on a date that is within forty-five (45) calendar days of the date of the initial determination or the date of the letter transmitting the last records released, whichever is later. An appeal of a denial of expedited processing must be made within ten (10) days of the date of the initial determination letter to deny expedited processing (see § 1070.17 of this subpart).

(c) *Form and content of administrative appeals.* In order to ensure a timely response to an appeal, the appeal shall be made in writing or by electronic means as follows:

(1) If appeal is made in writing, it shall be addressed to and submitted to the officer specified in paragraph (e) of this section at the address set forth in § 1070.14(b) of this subpart. The appeal shall be labeled ''Freedom of Information Act Appeal.''

(2) If an appeal is made by electronic means, it shall be addressed to the officer specified in paragraph (e) of this section and submitted as set forth on the CFPB's Web site, *http://www.consumerfinance.gov.* The appeal shall be labeled ''Freedom of Information Act Appeal.''

(3) The appeal shall set forth contact information for the requester, including, to the extent available, a mailing address, telephone number, or email address at which the CFPB may contact the requester regarding the appeal; and

(4) The appeal shall specify the applicable request tracking number, the date of the initial request, and the date of the letter of initial determination, and, where possible, enclose a copy of the initial request and the initial determination being appealed.

(d) *Processing of administrative appeals.* Appeals will be stamped with the date of their receipt by the FOIA response office, and will be processed in the order of their receipt. The receipt of the appeal will be acknowledged by the CFPB and the requester will be advised of the date the appeal was received, the appeal tracking number, and the expected date of response.

(e) *Determinations to grant or deny administrative appeals.* The General Counsel is authorized to and shall decide whether to affirm the initial determination (in whole or in part) or to reverse the initial determination (in whole or in part) and shall notify the requester of this decision in writing within twenty (20) business days after the date of receipt of the appeal, unless extended pursuant to § 1070.16(d) of this subpart.

(1) If it is decided that the appeal is to be denied (in whole or in part) the requester shall be:

(i) Notified in writing of the denial;

(ii) Notified of the reasons for the denial, including which of the FOIA exemptions were relied upon;

(iii) Notified of the name and title or position of the official responsible for the determination on appeal;

(iv) Provided with a statement that judicial review of the denial is available in the United States District Court for the judicial district in which the requester resides or has a principal place of business, the judicial district in which the requested records are located, or the District of Columbia in accordance with 5 U.S.C. 552(a)(4)(B); and

(v) Provided with notification that mediation services are available to the requester as a non-exclusive alternative to litigation through the Office of Government Information Services in accordance with 5 U.S.C. 552(h)(3).

(2) If the initial determination is reversed on appeal, the requester shall be so notified and the request shall be processed promptly in accordance with the decision on appeal.

(3) If the initial determination is remanded on appeal to the Chief FOIA Officer for further action, the requester shall be so notified and the request shall be processed in accordance with the decision on appeal. The remanded request shall be treated as a new request received by the CFPB as of the date when the General Counsel transmits the remand notification to the requester. The procedures and deadlines set forth in this subpart for processing, deciding, responding to, and filing administrative appeals of new FOIA requests shall apply to the remanded request.

(f) *Adjudication of administrative appeals of requests in litigation.* An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

§ 1070.22 Fees for processing requests for CFPB records.

(a) *In general.* The CFPB shall determine whether and to what extent to charge a requester fees for processing a FOIA request, for the services and in the amounts set forth in this paragraph, by determining an appropriate fee category for the requester (as set forth in paragraph (b) of this section) and then by charging the requester those fees applicable to the assigned category (as set forth in paragraph (c) of this section), unless circumstances exist (as described in paragraph (d) of this section) that render fees inapplicable or inadvisable or unless the requester has requested and the CFPB has granted a reduction in or waiver of fees (as set forth in paragraph (e) of this section).

(1) The CFPB shall charge a requester fees for the cost of copying or printing records at the rate of $0.10 per page.

(2) The CFPB shall charge a requester for all time spent by its employees searching for records that are responsive to a request. The CFPB shall charge the requester fees for search time as follows:

(i) The CFPB shall charge for search time at the salary rate(s) (basic pay plus sixteen (16) percent) of the employee(s) who conduct the search. However, the CFPB shall charge search fees at the rate of $9.00 per fifteen (15) minutes of search time whenever only administrative/clerical employees conduct a search and at the rate of $23.00 per fifteen (15) minutes of search time whenever only professional/executive employees conduct a search. Search charges shall also include transportation of employees and records necessary to the search at actual cost. Fees may be charged for search time even if the search does not yield any responsive records, or if records are exempt from disclosure.

(ii) The CFPB shall charge the requester for the actual direct costs of conducting an electronic records search, including computer search time, runs, and output. The CFPB shall also charge for time spent by computer operators or programmers (at the rates set forth in paragraph (a)(2)(i) of this section) who conduct or assist in the conduct of an electronic records search.

(3) The CFPB shall charge a requester for time spent by its employees examining responsive records to determine whether any portions of such record are exempt from disclosure, pursuant to the FOIA exemptions of 5 U.S.C. 552(b). The CFPB shall also charge a requester for time spent by its employees redacting any such exempt information from a record and preparing a record for release to the requester. The CFPB shall charge a requester for time spent reviewing records at the salary rate(s) (*i.e.,* basic pay plus sixteen (16) percent) of the employees who conduct the review. However, the CFPB shall charge review fees at the rate of $9.00 per fifteen (15) minutes of search time whenever only administrative/clerical employees review records and at the rate of $23.00 per fifteen (15) minutes of search time whenever only professional/executive employees review records. Fees shall be charged for review time even if records ultimately are not disclosed.

(4) Fees for all services provided shall be charged whether or not copies are made available to the requester for inspection. However, no fee shall be charged for monitoring a requester's inspection of records.

(5) Other services and materials requested which are not covered by this part nor required by the FOIA are chargeable at the actual cost to the CFPB. This includes, but is not limited to:

(i) Certifying that records are true copies; or

(ii) Sending records by special methods such as express mail, etc.

(b) *Categories of requesters.* (1) For purposes of assessing fees as set forth in this section, each requester shall be assigned to one of the following categories:

(i) *Commercial user* refers to one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation. The CFPB may determine from the use specified in the request that the requester is a commercial user.

(ii) *Educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(iii) *Non-commercial scientific institution* refers to an institution that is not operated on a ''commercial user'' basis as that term is defined in paragraph (b)(2)(i) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(iv) *Representative of the news media* refers to any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this paragraph, the term 'news' means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of 'news') who make their products available for purchase by or subscription by or free distribution to the general public. Other examples of news media entities include online publications and Web sites that regularly deliver news content to the public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the CFPB may also consider the past publication record of the requester in making such a determination.

(v) *''Other'' requester* refers to a requester who does not fall within any of the previously described categories.

(2) Within twenty (20) calendar days of its receipt of a request, the CFPB shall make a determination as to the proper fee category to apply to a requester. The CFPB shall inform the requester of the determination in the request acknowledgment letter, or if no such letter is required, in writing. The CFPB shall base its determination upon a review of the requester's submission and the CFPB's own records. Where the CFPB has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the CFPB should seek additional clarification before assigning the request to a specific category.

(3) If the CFPB assigns to a requester a fee category, then the requester shall have the right to submit an appeal of the CFPB's determination in accordance with § 1070.21 of this subpart. The CFPB shall communicate this appeal right as part of its written notification to the requester of an adverse fee category determination. The requester shall label its appeal request ''Appeal of Fee Category Determination.''

(c) *Fees applicable to each category of requester.* The following fee schedule applies uniformly throughout the CFPB to requests processed under the FOIA. Specific levels of fees are prescribed for each category of requester defined in paragraph (b) of this section.

(1) Commercial users shall be charged the full direct costs of searching for, reviewing, and duplicating the records they request. Moreover, when a request is received for disclosure that is primarily in the commercial interest of the requester, the CFPB is not required to consider a request for a waiver or reduction of fees based upon the assertion that disclosure would be in the public interest. The CFPB may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records or no records are located.

(2) Educational and non-commercial scientific institution requesters shall be charged only for the cost of duplicating the records they request, except that the CFPB shall provide the first one hundred (100) pages of duplication free of charge. To be eligible, requesters must show that the request is made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. These categories do not include requesters who want records for use in meeting individual academic research or study requirements.

(3) Representatives of the news media shall be charged only for the cost of duplicating the records they request, except that the CFPB shall provide them with the first one hundred (100) pages of duplication free of charge.

(4) Other requesters who do not fit any of the categories described above shall be charged the full direct cost of searching for and duplicating records that are responsive to the request, except that the CFPB shall provide the first one hundred (100) pages of duplication and the first two hours of search time free of charge. The CFPB may recover the cost of searching for records even if there is ultimately no disclosure of records, or no records are located. Requests from persons for records about themselves filed in the CFPB's systems of records shall continue to be treated under the fee provisions of the Privacy Act of 1974, 5 U.S.C. 552a, which permit fees only for duplication, after the first one hundred (100) pages are furnished free of charge.

(d) *Other circumstances when fees are not charged.* Notwithstanding paragraphs (b) and (c) of this section, the CFPB may not charge a requester a fee for processing a FOIA request if any of the following applies:

(1) The cost of collecting a fee would be equal to or greater than the fee itself;

(2) The fees were waived or reduced in accordance with paragraph (e) of this section;

(3) If the CFPB fails to comply with any time limit under §§ 1070.15 or 1070.21 of this subpart, and no unusual circumstances (as that term is defined in § 1070.16(d)) or exceptional circumstances apply to the processing of the request, then the CFPB shall not assess search fees, or if the requester is a representative of the news media or an educational or noncommercial scientific institution, then the CFPB shall not assess duplication fees. The term ''exceptional circumstances'' does not include a delay that results from a predictable CFPB workload of requests, unless the CFPB demonstrates reasonable progress in reducing its backlog of pending requests; or

(4) If the CFPB determines, as a matter of administrative discretion, that waiving or reducing the fees would serve the interest of the United States Government.

(e) *Waiver or reduction of fees.* (1) A requester shall be entitled to receive from the CFPB a waiver or reduction in the fees otherwise applicable to a FOIA request whenever the requester:

(i) Requests such waiver or reduction of fees in writing or by electronic means as part of the FOIA request;

(ii) Labels the request for waiver or reduction of fees ''Fee Waiver or Reduction Requested'' on the FOIA request; and

(iii) Demonstrates that the fee reduction or waiver request that a waiver or reduction of the fees is in the public interest because:

(A) Furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the government; and

(B) Furnishing the information is not primarily in the commercial interest of the requester.

(2) To determine whether the requester has satisfied the requirements of paragraph (e)(1)(ii)(A), the CFPB shall consider the following factors:

(i) The subject of the requested records must concern identifiable operations or activities of the Federal government, with a connection that is direct and clear, and not remote or attenuated.

(ii) The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be ''likely to contribute'' to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially similar form, is not as likely to contribute to the public's understanding.

(iii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent.

(3) To determine whether the requester has satisfied the requirements of paragraph (e)(1)(ii)(B), the CFPB shall consider the following factors:

(i) The CFPB shall consider any commercial interest of the requester (with reference to the definition of ''commercial user'' in (b)(1)(i) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters shall be given an opportunity in the administrative process to provide explanatory information regarding this consideration.

(ii) A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. The CFPB ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

(4) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(5) The CFPB shall decide whether to grant or deny a request to reduce or waive fees prior to processing a request. The CFPB shall notify the requester of the determination in writing.

(6) If the CFPB denies a request to reduce or waive fees, then the CFPB shall advise the requester, in the denial notification letter, that the requester may incur fees if the CFPB proceeds to process the request. The notification letter shall also advise the requester that the CFPB will not proceed to process the request further unless the requester, in writing, directs the CFPB to do so and either agrees to pay any fees that may apply to processing the request or specifies an upper limit (of not less than $25) that the requester is willing to pay to process the request. If the CFPB does not receive this written direction and agreement/specification within thirty (30) calendar days of the date of the denial notification letter, then the CFPB shall deem the request to be withdrawn.

(7) If the CFPB denies a request to reduce or waive fees, then the requester shall have the right to submit an appeal of the denial determination in accordance with section 1070.21 of this subpart. The CFPB shall communicate this appeal right as part of its written notification to the requester denying the fee reduction or waiver request. The requester should label its appeal request ''Appeal for Fee Reduction/Waiver.''

(f) *Advance notice and prepayment of fees.* (1) When the CFPB estimates the fees for processing a request to exceed the limit set by the requester, and that amount is less than $250, or the requester did not specify a limit and the amount is less than $250, the requester shall be notified of the estimated fees, and provided a breakdown of the fees attributable to search, review, and duplication, respectively. The requester must provide an agreement to pay the estimated fees; however, the requester shall also be given an opportunity to reformulate the request in an attempt to reduce fees.

(2) If the requester has failed to state a limit and the fees are estimated to exceed $250, the requester shall be notified of the estimated fees and provided a breakdown of the fees attributable to search, review, and duplication, respectively. The requester must pre-pay such amount prior to the processing of the request, or provide satisfactory assurance of full payment if the requester has a history of prompt payment of FOIA fees. The requester shall also be given an opportunity to reformulate the request in such a way as to lower the applicable fees.

(3) The CFPB reserves the right to request prepayment after a request is processed and before documents are released.

(4) If a requester has previously failed to pay a fee within thirty (30) calendar days of the date of the billing, the requester shall be required to pay the full amount owed plus any applicable interest and to make an advance payment of the full amount of the estimated fee before the CFPB begins to process a new request or the pending request.

(5) When the CFPB acts under paragraphs (f)(1) through (4) of this section, the statutory time limits of twenty (20) days (excluding Saturdays, Sundays, and legal public holidays) from receipt of initial requests or appeals, plus extensions of these time limits, shall begin only after fees have been paid, a written agreement to pay fees has been provided, or a request has been reformulated.

(g) *Form of payment.* Payment may be tendered as set forth on the CFPB's Web site, *http://www.consumerfinance.gov.*

(h) *Charging interest.* The CFPB may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the date of the billing until payment is received by the CFPB. The CFPB will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(i) *Aggregating requests.* Where the CFPB reasonably believes that a requester or a group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the CFPB may aggregate those requests and charge accordingly. The CFPB may presume that multiple requests of this type made within a thirty (30) day period have been made in order to avoid fees. Where requests are separated by a longer period, the CFPB will aggregate them only where there exists a solid basis for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

§ 1070.23 Authority and responsibilities of the Chief FOIA Officer.

(a) *Chief FOIA Officer.* The Director authorizes the Chief FOIA Officer to act upon all requests for agency records, with the exception of determining appeals from the initial determinations of the Chief FOIA Officer, which will be decided by the General Counsel. The Chief FOIA officer shall, subject to the authority of the Director:

(1) Have CFPB-wide responsibility for efficient and appropriate compliance with the FOIA;

(2) Monitor implementation of the FOIA throughout the CFPB and keep the Director, the General Counsel, and the Attorney General appropriately informed of the CFPB's performance in implementing the FOIA;

(3) Recommend to the Director such adjustments to agency practices, policies, personnel and funding as may be necessary to improve the Chief FOIA Officer's implementation of the FOIA;

(4) Review and report to the Attorney General, through the Director, at such times and in such formats as the Attorney General may direct, on the CFPB's performance in implementing the FOIA;

(5) Facilitate public understanding of the purposes of the statutory exemptions of the FOIA by including concise descriptions of the exemptions in both the CFPB's handbook and the CFPB's annual report on the FOIA, and by providing an overview, where appropriate, of certain general categories of CFPB records to which those exemptions apply;

(6) Designate one or more FOIA Public Liaisons; and

(7) Maintain and update, as necessary and in accordance with the requirements of this subpart, the CFPB's FOIA Web site, including its e-FOIA Library.

(b) *FOIA Public Liaisons.* FOIA Public Liaisons shall report to the Chief FOIA Officer and shall serve as supervisory officials to whom a requester can raise concerns about the service the requester has received from the CFPB's FOIA office, following an initial response from the FOIA office staff. FOIA Public Liaisons shall be responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

Subpart C—Disclosure of CFPB Information in Connection With Legal Proceedings

§ 1070.30 Purpose and scope; definitions.

(a) This subpart sets forth the procedures to be followed with respect to:

(1) Service of summonses and complaints directed to the CFPB, the Director, or to any CFPB employee in connection with Federal or State litigation arising out of or involving the performance of official activities of the CFPB; and

(2) Subpoenas, court orders, or other requests or demands for any CFPB information, whether contained in the files of the CFPB or acquired by a CFPB employee as part of the performance of

that employee's duties or by virtue of employee's official status.

(b) This subpart does not apply to requests for official information made pursuant to subparts B, D, and E of this part.

(c) This subpart does not apply to requests for information made in the course of adjudicating claims against the CFPB by CFPB employees (present or former) or applicants for CFPB employment for which jurisdiction resides with the U.S. Equal Employment Opportunity Commission, the U.S. Merit Systems Protection Board, the Office of Special Counsel, the Federal Labor Relations Authority, or their successor agencies, or a labor arbitrator operating under a collective bargaining agreement between the CFPB and a labor organization representing CFPB employees.

(d) This subpart is intended only to inform the public about CFPB procedures concerning the service of process and responses to subpoenas, summons, or other demands or requests for official information or action and is not intended to and does not create, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by a party against the CFPB or the United States.

(e) For purposes of this subpart:

(1) *Demand* means a subpoena or order for official information, whether contained in CFPB records or through testimony, related to or for possible use in a legal proceeding.

(2) *Legal proceeding* encompasses all pre-trial, trial, and post-trial stages of all judicial or administrative actions, hearings, investigations, or similar proceedings before courts, commissions, boards, grand juries, arbitrators, or other judicial or quasi-judicial bodies or tribunals, whether criminal, civil, or administrative in nature, and whether foreign or domestic. This phrase includes all stages of discovery as well as formal or informal requests by attorneys or others involved in legal proceedings.

(3) *Official Information* means all information of any kind, however stored, that is in the custody and control of the CFPB or was acquired by CFPB employees, or former employees as part of their official duties or because of their official status while such individuals were employed by or served on behalf of the CFPB. Official information also includes any information acquired by CFPB employees or former employees while such individuals were engaged in matters related to consumer financial protection functions prior to the employees' transfer to the CFPB pursuant to Subtitle F of the Consumer Financial Protection Act of 2010.

(4) *Request* means any request for official information in the form of testimony, affidavits, declarations, admissions, responses to interrogatories, document production, inspections, or formal or informal interviews, during the course of a legal proceeding, including pursuant to the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, or other applicable rules of procedure.

(5) *Testimony* means a statement in any form, including personal appearances before a court or other legal tribunal, interviews, depositions, telephonic, televised, or videographed statements or any responses given during discovery or similar proceeding in the course of litigation.

§ 1070.31 Service of summonses and complaints.

(a) Only the General Counsel is authorized to receive and accept summonses or complaints sought to be served upon the CFPB or CFPB employees sued in their official capacity. Such documents should be served upon the General Counsel, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552. This authorization for receipt shall in no way affect the requirements of service elsewhere provided in applicable rules and regulations.

(b) If, notwithstanding paragraph (a) of this section, any summons or complaint described in that paragraph is delivered to an employee of the CFPB, the employee shall decline to accept the proffered service and may notify the person attempting to make service of the regulations set forth herein. If, notwithstanding this instruction, an employee accepts service of a document described in paragraph (a) of this section, the employee shall immediately notify and deliver a copy of the summons and complaint to the General Counsel.

(c) When a CFPB employee is sued in an individual capacity for an act or omission occurring in connection with duties performed on behalf of the CFPB (whether or not the officer or employee is also sued in an official capacity), the employee by law is to be served personally with process. *See* Fed. R. Civ. P. 4(i)(3). An employee sued in an individual capacity for an act or omission occurring in connection with duties performed on behalf of the CFPB shall immediately notify, and deliver a copy of the summons and complaint to, the General Counsel.

(d) The CFPB will only accept service of process for an employee sued in his or her official capacity. Documents for which the General Counsel accepts service in official capacity shall be stamped ''Service Accepted in Official Capacity Only.'' Acceptance of service shall not constitute an admission or waiver with respect to jurisdiction, propriety of service, improper venue, or any other defense in law or equity available under applicable laws or rules.

§ 1070.32 Service of subpoenas, court orders, and other demands for CFPB information or action.

(a) Except in cases in which the CFPB is represented by legal counsel who have entered an appearance or otherwise given notice of their representation, only the General Counsel is authorized to receive and accept subpoenas or other demands or requests directed to the CFPB or its employees, whether civil or criminal in nature, for:

(1) Records of the CFPB;

(2) Official information including, but not limited to, testimony, affidavits, declarations, admissions, responses to interrogatories, or informal statements, relating to material contained in the files of the CFPB or which any CFPB employee acquired in the course and scope of the performance of his or her official duties;

(3) Garnishment or attachment of compensation of current or former employees; or

(4) The performance or non-performance of any official CFPB duty.

(b) Documents described in paragraph (a) of this section should be served upon the General Counsel, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552. Service must be effected as provided in applicable rules and regulations governing service in Federal judicial and administrative proceedings. Acceptance of such documents by the General Counsel does not constitute a waiver of any defense that might otherwise exist with respect to service under the Federal Rules of Civil or Criminal Procedure or other applicable laws or regulations.

(c) In the event that any demand or request described in paragraph (a) of this section is sought to be delivered to a CFPB employee other than in the manner prescribed in paragraph (b) of this section, such employee shall decline service and direct the server of process to these regulations. If the demand or request is nonetheless delivered to the employee, the employee shall immediately notify, and deliver a copy of that document to, the General Counsel.

(d) Except as otherwise provided in this subpart, the CFPB is not an agent for service for, or otherwise authorized to accept on behalf of its employees, any subpoenas, orders, or other demands or requests, which are not related to the employees' official duties except upon the express, written authorization of the individual CFPB employee to whom such demand or request is directed.

(e) Copies of any subpoenas, orders, or other demands or requests that are directed to former employees of the CFPB in connection with the performance of official CFPB duties shall also be served upon the General Counsel. The CFPB shall not, however, serve as an agent for service for the former employee, nor is the CFPB otherwise authorized to accept service on behalf of its former employees. If the demand involves their official duties as CFPB employees, former employees who receive subpoenas, orders, or similar compulsory process should also notify, and deliver a copy of the document to, the General Counsel.

§ 1070.33 Testimony and production of documents prohibited unless approved by the General Counsel.

(a) Unless authorized by the General Counsel, no employee or former employee of the CFPB shall, in response to a demand or a request provide oral or written testimony by deposition, declaration, affidavit, or otherwise concerning any official information.

(b) Unless authorized by the General Counsel, no employee or former employee shall, in response to a demand or request, produce any document or any material acquired as part of the performance of that employee's duties or by virtue of that employee's official status.

§ 1070.34 Procedure when testimony or production of documents is sought; general.

(a) If, as part of a proceeding in which the United States or the CFPB is not a party, official information is sought through a demand for testimony, CFPB records, or other material, the party seeking such information must (except as otherwise required by Federal law or authorized by the General Counsel) set forth in writing:

(1) The title and forum of the proceeding, if applicable;

(2) A detailed description of the nature and relevance of the official information sought;

(3) A showing that other evidence reasonably suited to the requester's needs is not available from any other source; and

(4) If testimony is requested, the intended use of the testimony, a general summary of the desired testimony, and a showing that no document could be provided and used in lieu of testimony.

(b) To the extent he or she deems necessary or appropriate, the General Counsel may also require from the party seeking such information a plan of all reasonably foreseeable demands, including but not limited to the names of all employees and former employees from whom discovery will be sought, areas of inquiry, expected duration of proceedings requiring oral testimony, identification of potentially relevant documents, or any other information deemed necessary to make a determination. The purpose of this requirement is to assist the General Counsel in making an informed decision regarding whether testimony or the production of documents or material should be authorized.

(c) The General Counsel may consult or negotiate with an attorney for a party, or the party if not represented by an attorney, to refine or limit a request or demand so that compliance is less burdensome.

(d) The General Counsel will notify the CFPB employee and such other persons as circumstances may warrant of his or her decision regarding compliance with the request or demand.

§ 1070.35 Procedure when response to demand is required prior to receiving instructions.

(a) If a response to a demand described in section 1070.34 of this subpart is required before the General Counsel renders a decision, the CFPB will request that the appropriate CFPB attorney or an attorney of the Department of Justice, as appropriate, take steps to stay, postpone, or obtain relief from the demand pending decision. If necessary, the attorney will:

(1) Appear with the employee upon whom the demand has been made;

(2) Furnish the court or other authority with a copy of the regulations contained in this subpart;

(3) Inform the court or other authority that the demand has been, or is being, as the case may be, referred for the prompt consideration of the appropriate CFPB official; and

(4) Respectfully request the court or authority to stay the demand pending receipt of the requested instructions.

(b) In the event that an immediate demand for production or disclosure is made in circumstances which would preclude the proper designation or appearance of an attorney of the CFPB or the Department of Justice on the employee's behalf, the employee, if necessary, shall respectfully request from the demanding court or authority a reasonable stay of proceedings for the purpose of obtaining instructions from the General Counsel.

§ 1070.36 Procedure in the event of an adverse ruling.

If a stay or, or other relief from, the effect of a demand made pursuant to sections 1070.34 and 1070.35 of this subpart is declined or not obtained, or if the court or other judicial or quasi-judicial authority declines to stay the effect of the demand made pursuant to sections 1070.34 and 1070.35 of this subpart, or if the court or other authority rules that the demand must be complied with irrespective of the General Counsel's instructions not to produce the material or disclose the information sought, the employee upon whom the demand has been made shall respectfully decline to comply with the demand citing this subpart and *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951).

§ 1070.37 Considerations in determining whether the CFPB will comply with a demand or request.

(a) In deciding whether to comply with a demand or request, CFPB officials and attorneys shall consider, among other pertinent considerations:

(1) Whether such compliance would be unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand arose;

(2) Whether the number of similar requests would have a cumulative effect on the expenditure of CFPB resources;

(3) Whether compliance is appropriate under the relevant substantive law concerning privilege or disclosure of information;

(4) The public interest;

(5) The need to conserve the time of CFPB employees for the conduct of official business;

(6) The need to avoid spending time and money of the United States for private purposes;

(7) The need to maintain impartiality between private litigants in cases where a substantial government interest is not implicated;

(8) Whether compliance would have an adverse effect on performance by the CFPB of its mission and duties;

(9) The need to avoid involving the CFPB in controversial issues not related to its mission;

(10) Compliance would interfere with supervisory examinations, compromise the CFPB's supervisory functions or programs, or undermine public confidence in supervised financial institutions; and

(11) Compliance would interfere with the CFPB's ability to monitor for risks to consumers in the offering or provision of consumer financial products and services.

(b) Among those demands and requests in response to which compliance will not ordinarily be authorized are those with respect to which any of the following factors, inter alia, exist:

(1) Compliance would violate a statute or applicable rule of procedure;

(2) Compliance would violate a specific regulation or Executive order;

(3) Compliance would reveal information properly classified in the interest of national security;

(4) Compliance would reveal confidential or privileged commercial or financial information or trade secrets without the owner's consent;

(5) Compliance would compromise the integrity of the deliberative processes of the CFPB;

(6) Compliance would not be appropriate or necessary under the relevant substantive law governing privilege;

(7) Compliance would reveal confidential information; or

(8) Compliance would interfere with ongoing investigations or enforcement proceedings, compromise constitutional rights, or reveal the identity of a confidential informant.

(c) The CFPB may condition disclosure of official information pursuant to a request or demand on the entry of an appropriate protective order.

§ 1070.38 Prohibition on providing expert or opinion testimony.

(a) Except as provided in this section, and subject to 5 CFR 2635.805, CFPB employees or former employees shall not provide opinion or expert testimony based upon information which they acquired in the scope and performance of their official CFPB duties, except on behalf of the CFPB or the United States or a party represented by the CFPB, or the Department of Justice, as appropriate.

(b) Any expert or opinion testimony by a former employee of the CFPB shall be excepted from paragraph (a) of this section where the testimony involves only general expertise gained while employed at the CFPB.

(c) Upon a showing by the requestor of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the interests of the United States, the General Counsel may, consistent with 5 CFR 2635.805, exercise his or her discretion to grant special, written authorization for CFPB employees, or former employees, to appear and testify as expert witnesses at no expense to the United States.

(d) If, despite the final determination of the General Counsel, a court of competent jurisdiction or other appropriate authority orders the appearance and expert or opinion testimony of a current or former CFPB employee, that person shall immediately inform the General Counsel of such order. If the General Counsel determines that no further legal review of or challenge to the court's order will be made, the CFPB employee, or former employee, shall comply with the order. If so directed by the General Counsel, however, the employee, or former employee, shall respectfully decline to testify.

Subpart D—Confidential Information

§ 1070.40 Purpose and scope.

This subpart does not apply to requests for official information made pursuant to subparts B, C, or E of this part.

§ 1070.41 Non-disclosure of confidential information.

(a) *Non-disclosure.* Except as required by law or as provided in this part, no current or former employee or contractor or consultant of the CFPB, or any other person in possession of confidential information, shall disclose such confidential information by any means (including written or oral communications) or in any format (including paper and electronic formats), to:

(1) Any person who is not an employee, contractor, or consultant of the CFPB; or

(2) Any CFPB employee, contractor, or consultant when the disclosure of such confidential information to that employee, contractor, or consultant is not relevant to the performance of the employee's, contractor's, or consultant's assigned duties.

(b) *Disclosures to contractors and consultants.* CFPB contractors or consultants may receive confidential information only if such contractors or consultants certify in writing to treat such confidential information in accordance with these rules, Federal laws and regulations that apply to Federal agencies for the protection of the confidentiality of personally identifiable information and for data security and integrity, as well as any additional conditions or limitations that the CFPB may impose.

(c) *Disclosure of materials derived from confidential information.* Nothing in this subpart shall limit the discretion of the CFPB to disclose materials that it derives from or creates using confidential information to the extent that such materials do not identify, either directly or indirectly, any particular person to whom the confidential information pertains.

(d) *Disclosability of confidential information provided to the CFPB by other agencies.* Nothing in this subpart requires or authorizes the CFPB to disclose confidential information that another agency has provided to the CFPB to the extent that such disclosure contravenes applicable law or the terms of any agreement that exists between the CFPB and the agency to govern the CFPB's treatment of information that the agency provides to the CFPB.

§ 1070.42 Disclosure of confidential supervisory information to supervised financial institutions and their affiliates and by supervised financial institutions and their affiliates to others.

(a) *Discretionary disclosure of confidential supervisory information to supervised financial institutions and their affiliates.* The CFPB may, in its discretion, and to the extent consistent with applicable law, disclose confidential supervisory information concerning a supervised financial institution or its service providers to that supervised financial institution or to its affiliates.

(b) *Disclosure of confidential supervisory information by a supervised financial institution or its affiliates.* Unless directed otherwise by the Associate Director for Supervision, Enforcement, and Fair Lending or by his or her delegee:

(1) Any supervised financial institution lawfully in possession of confidential supervisory information of the CFPB pursuant to this section may disclose such information, or portions thereof, to its affiliates and to the following individuals to the extent that the disclosure of such confidential supervisory information is relevant to the performance of such individuals' assigned duties:

(i) The directors, officers, trustees, members, general partners, or employees of the supervised financial institution; and

(ii) The directors, officers, trustees, members, general partners, or employees of the affiliates of the supervised financial institution.

(2) Any supervised financial institution or affiliate thereof that is lawfully in possession of confidential supervisory information of the CFPB pursuant to this section may disclose such information, or portions thereof, to:

(i) Its certified public accountant, legal counsel, contractor, consultant, or service provider; or

(ii) Another person, with the prior written approval of the Associate Director for Supervision, Enforcement, and Fair Lending or his or her delegee.

(3) Where a supervised financial institution or its affiliate discloses confidential supervisory information pursuant to this paragraph (b) of this section:

(i) The recipient of such confidential supervisory information shall not, without the prior written approval of the Associate Director for Supervision, Enforcement, and Fair Lending or his or her delegee, utilize, make, or retain copies of, or disclose confidential supervisory information for any purpose, except as is necessary to provide advice or services to the supervised financial institution or its affiliate; and

(ii) The supervised financial institution or affiliate disclosing the confidential supervisory information shall take reasonable steps to ensure that the recipient complies with paragraph (b)(3)(i) of this section.

§ 1070.43 Disclosure of confidential information to law enforcement agencies and other government agencies.

(a) *Required disclosure of confidential information to government agencies.* The CFPB shall:

(1) Disclose a draft of a report of examination of a supervised financial institution prior to its finalization, in accordance with 12 U.S.C. 5515(e)(1)(C), and disclose a final report of examination, including any and all revisions made to such a report, to a Federal or State agency with jurisdiction over that supervised financial institution, provided that the CFPB receives from the agency reasonable assurances as to the confidentiality of the information disclosed; and

(2) Disclose confidential consumer complaint information to a Federal or State agency to facilitate preparation of reports to Congress required by 12 U.S.C. 5493(b)(3)(C) and to facilitate the CFPB's supervision and enforcement activities and its monitoring of the market for consumer financial products and services, provided that the agency shall first give written assurance to the CFPB that it will maintain such information in confidence, including in a manner that conforms to the standards that apply to Federal agencies for the protection of the confidentiality of personally identifiable information and for data security and integrity.

(b) *Discretionary disclosure of confidential information to government agencies.*

(1) Upon receipt of a written request that contains the information required by paragraph (b)(2) of this section, the CFPB may, in its sole discretion, disclose confidential information to a Federal or State agency to the extent that the disclosure of the information is relevant to the exercise of the agency's statutory or regulatory authority or, with respect to the disclosure of confidential supervisory information, to a Federal or State agency having jurisdiction over a supervised financial institution.

(2) To obtain access to confidential information pursuant to paragraph (b)(1) of this section, an authorized officer or employee of the agency shall submit a written request to the General Counsel, who shall act upon the request in consultation with the CFPB's Associate Director for Supervision, Enforcement, and Fair Lending or other appropriate CFPB personnel. The request shall include the following:

(i) A description of the particular information, kinds of information, and where possible, the particular documents to which access is sought;

(ii) A statement of the purpose for which the information will be used;

(iii) A statement certifying and identifying the agency's legal authority for requesting the documents;

(iv) A statement certifying and identifying the agency's legal authority for protecting the requested information from public disclosure; and

(v) A certification that the agency will maintain the requested confidential information in confidence, including in a manner that conforms to the standards that apply to Federal agencies for the protection of the confidentiality of personally identifiable information and for data security and integrity, as well as any additional conditions or limitations that the CFPB may impose.

(c) *State requests for information other than confidential information.* A request or demand by a State agency for information or records of the CFPB other than confidential information shall be made and considered in accordance with the rules set forth elsewhere in this part.

(d) *Negotiation of standing requests.* The CFPB may negotiate terms governing the exchange of confidential information with Federal or State agencies on a standing basis, as appropriate.

§ 1070.44 Disclosure of confidential consumer complaint information.

Nothing in this part shall limit the discretion of the CFPB, to the extent permitted by law, to disclose confidential consumer complaint information as it deems necessary to investigate, resolve, or otherwise respond to consumer complaints or inquiries concerning financial institutions or consumer financial products and services.

§ 1070.45 Affirmative disclosure of confidential information.

(a) The CFPB may disclose confidential investigative information and other confidential information, in accordance with applicable law, as follows:

(1) To a CFPB employee, as that term is defined in § 1070.2 of this part and in accordance with § 1070.41 of this subpart;

(2) To either House of the Congress or to an appropriate committee or subcommittee of the Congress, as set forth in 12 U.S.C. 5562(d)(2), provided that, upon the receipt by the CFPB of a request from the Congress for confidential information that a financial institution submitted to the CFPB along with a claim that such information consists of a trade secret or privileged or confidential commercial or financial information, or confidential supervisory information, the CFPB shall notify the financial institution in writing of its receipt of the request and provide the institution with a copy of the request;

(3) In investigational hearings and witness interviews, as is reasonably necessary, at the discretion of the CFPB;

(4) In an administrative or court proceeding to which the CFPB is a party. In the case of confidential investigatory material that contains any trade secret or privileged or confidential commercial or financial information, as claimed by designation by the submitter of such material, or confidential supervisory information, the submitter may seek an appropriate protective or *in camera* order prior to disclosure of such material in a proceeding;

(5) To law enforcement agencies and other government agencies in summary form to the extent necessary to notify such agencies of potential violations of laws subject to their jurisdiction; or

(6) As required under any other applicable law.

§ 1070.46 Other disclosures of confidential information.

(a) To the extent permitted by law and as authorized by the Director in writing, the CFPB may disclose confidential information other than as set forth in this subpart.

(b) Prior to disclosing confidential information pursuant to paragraph (a) of this section, the CFPB may, as it deems appropriate under the circumstances, provide written notice to the person to whom the confidential information pertains that the CFPB intends to disclose its confidential information in accordance with this section.

(c) The authority of the Director to disclose confidential information pursuant to paragraph (a) shall not be delegated. However, a person authorized to perform the functions of the Director in accordance with law may exercise the authority of the Director as set forth in this section.

§ 1070.47 Other rules regarding the disclosure of confidential information.

(a) *Further disclosure prohibited.* (1) All confidential information made available under this subpart shall remain the property of the CFPB, unless the General Counsel provides otherwise in writing.

(2) Except as set forth in this subpart, no supervised financial institution, Federal or State agency, any officer, director, employee or agent thereof, or any other person to whom the confidential information is made available under this subpart, may further disclose such confidential information without the prior written permission of the General Counsel.

(3) A supervised financial institution, Federal or State agency, any officer, director, employee or agent thereof, or any other person to whom the CFPB's confidential information is made available under this subpart, that receives from a third party a legally enforceable demand or request for such confidential information (including but not limited to, a subpoena or discovery request or a request made pursuant to the Freedom of Information Act, 5 U.S.C. 552, the Privacy Act of 1974, 5 U.S.C. 552a, or any State analogue to such statutes) should:

(i) Inform the General Counsel of such request or demand in writing and provide the General Counsel with a copy of such request or demand as soon as practicable after receiving it;

(ii) To the extent permitted by applicable law, advise the requester that:

(A) The confidential information sought may not be disclosed insofar as it is the property of the CFPB; and

(B) Any request for the disclosure of such confidential information is properly directed to the CFPB pursuant to its regulations set forth in this part.

(iii) Consult with the General Counsel before complying with the request or demand, and to the extent applicable:

(A) Give the CFPB a reasonable opportunity to respond to the demand or request;

(B) Assert all reasonable and appropriate legal exemptions or privileges that the CFPB may request be asserted on its behalf; and

(C) Consent to a motion by the CFPB to intervene in any action for the purpose of asserting and preserving any claims of confidentiality with respect to any confidential information.

(4) Nothing in this section shall prevent a supervised financial institution, Federal or State agency, any officer, director, employee or agent thereof, or any other person to whom the information is made available under this subpart from complying with a legally valid and enforceable order of a court of competent jurisdiction compelling production of the CFPB's confidential information, or, if compliance is deemed compulsory, with a request or demand from either House of the Congress or a duly authorized committee of the Congress. To the extent that compulsory disclosure of confidential information occurs as set forth in this paragraph, the producing party shall use its best efforts to ensure that the requestor secures an appropriate protective order or, if the requestor is a legislative body, use its best efforts to obtain the commitment or agreement of the legislative body that it will maintain the confidentiality of the confidential information.

(5) No person obtaining access to confidential information pursuant to this subpart may make a personal copy of any such information, and no person may remove confidential information from the premises of the institution or agency in possession of such information except as permitted under this subpart or by the CFPB.

(b) *Additional conditions and limitations.* The CFPB may impose any additional conditions or limitations on disclosure or use under this subpart that it determines are necessary.

(c) *Non-waiver.* (1) In General. The CFPB shall not be deemed to have waived any privilege applicable to any information by transferring that information to, or permitting that information to be used by, any Federal or State agency.

(2) *Rule of Construction.* Paragraph (c)(1) of this section shall not be construed as implying that any person waives any privilege applicable to any information because paragraph (c)(1) of this section does not apply to the transfer or use of that information.

§ 1070.48 Privileges not affected by disclosure to the CFPB.

(a) *In General.* The submission by any person of any information to the CFPB for any purpose in the course of any supervisory or regulatory process of the CFPB shall not be construed as waiving, destroying, or otherwise affecting any privilege such person may claim with respect to such information under Federal or State law as to any person or entity other than the CFPB.

(b) *Rule of Construction.* Paragraph (a) of this section shall not be construed as implying or establishing that—

(1) Any person waives any privilege applicable to information that is submitted or transferred under circumstances to which paragraph (a) of this section does not apply; or

(2) Any person would waive any privilege applicable to any information by submitting the information to the CFPB but for this section.

Subpart E—The Privacy Act

§ 1070.50 Purpose and scope; definitions.

(a) This subpart implements the provisions of the Privacy Act of 1974, 5 U.S.C. 552a (the Privacy Act). The regulations apply to all records maintained by the CFPB and which are retrieved by an individual's name or personal identifier. The regulations set forth the procedures for requests for access to, or amendment of, records concerning individuals that are contained in systems of records maintained by the CFPB. These regulations should be read in conjunction with the Privacy Act, which provides additional information about this topic.

(b) For purposes of this subpart, the following definitions apply:

(1) The term *Chief Privacy Officer* means the Chief Information Officer of the CFPB or any CFPB employee to whom the Chief Information Officer has delegated authority to act under this part;

(2) The term *guardian* means the parent of a minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction;

(3) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence;

(4) *Maintain* includes maintain, collect, use, or disseminate;

(5) *Record* means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voiceprint or a photograph;

(6) *Routine use* means the disclosure of a record that is compatible with the purpose for which it was collected;

(7) *System of records* means a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual; and

(8) *Statistical record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

§ 1070.51 Authority and responsibilities of the Chief Privacy Officer.

The Chief Privacy Officer is authorized to:

(a) Respond to requests for access to, accounting of, or amendment of records contained in a system of records maintained by the CFPB;

(b) Approve the publication of new systems of records and amend existing systems of record; and

(c) File any necessary reports related to the Privacy Act.

§ 1070.52 Fees.

(a) *Copies of records.* The CFPB shall provide the requester with copies of records requested pursuant to § 1070.53 of this subpart at the same cost charged for duplication of records under § 1070.22 of this part.

(b) *No fee.* The CFPB will not charge a fee if:

(1) Total charges associated with a request are less than $5, or

(2) The requester is a CFPB employee or former employee, or an applicant for employment with the CFPB, and the request pertains to that employee, former employee, or applicant.

§ 1070.53 Request for access to records.

(a) *Procedures for making a request for access to records.* An individual's requests for access to records that pertain to that individual (or to the individual for whom the requester serves as guardian) may be submitted to the CFPB in writing or by electronic means.

(1) If submitted in writing, the request shall be labeled ''Privacy Act Request'' and shall be addressed to the Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

(2) If submitted by electronic means, the request shall be labeled ''Privacy Act Request'' and the request shall be submitted as set forth at the CFPB's Web site, *http://www.consumerfinance.gov*.

(b) *Content of a request for access to records.* A request for access to records shall include:

(1) A statement that the request is made pursuant to the Privacy Act;

(2) The name of the system of records that the requester believes contains the record requested, or a description of the nature of the record sought in detail sufficient to enable CFPB personnel to locate the system of records containing the record with a reasonable amount of effort;

(3) Whenever possible, a description of the nature of the record sought, the date of the record or the period in which the requester believes that the record was created, and any other information that might assist the CFPB in identifying the record sought (e.g., maiden name, dates of employment, account information, etc.).

(4) Information necessary to verify the requester's identity pursuant to paragraph (c) of this section;

(5) The mailing or email address where the CFPB's response or further correspondence should be sent.

(c) *Verification of identity.* To obtain access to the CFPB's records pertaining to a requester, the requester shall provide proof to the CFPB of the requester's identity as provided below.

(1) In general, the following will be considered adequate proof of a requester's identity:

(i) A photocopy of two forms of identification, including one form of identification that bears the requester's photograph, and one form of identification that bears the requester's signature;

(ii) A photocopy of a single form of identification that bears both the requester's photograph and signature; or

(iii) A statement swearing or affirming the requester's identity and to the fact that the requester understands the penalties provided in 5 U.S.C. 552a(i)(3).

(2) Notwithstanding paragraph (c)(1) of this section, a designated official may require additional proof of the requester's identity before action will be taken on any request, if such official determines that it is necessary to protect against unauthorized disclosure of information in a particular case. In addition, if a requester seeks records pertaining to an individual in the requester's capacity as that individual's guardian, the requester shall be required to provide adequate proof of the requester's legal relationship before action will be taken on any request.

(d) *Request for accounting of previous disclosures.* An individual may request an accounting of previous disclosures of records pertaining to that individual in a system of records as provided in 5 U.S.C. 552a(c). Such requests should conform to the procedures and form for requests for access to records set forth in paragraphs (a) and (b) of this section.

§ 1070.54 CFPB procedures for responding to a request for access.

(a) *Acknowledgment and response.* The CFPB will provide written acknowledgement of the receipt of a request within twenty (20) business days from the receipt of the request and will, where practicable, respond to each request within that twenty (20) day period. When a full response is not practicable within the twenty (20) day period, the CFPB will respond as promptly as possible.

(b) *Disclosure.* (1) When the CFPB discloses information in response to a request, the CFPB will make the information available for inspection and copying during regular business hours as provided in § 1070.13 of this part, or the CFPB will mail it or email it the requester, if feasible, upon request.

(2) The requester may bring with him or her anyone whom the requester chooses to see the requested material. All visitors to the CFPB's buildings must comply with the applicable security procedures.

(c) *Denial of a request.* If the CFPB denies a request made pursuant to § 1070.53 of this subpart, it will inform the requester in writing of the reason(s) for denial and the procedures for appealing the denial.

§ 1070.55 Special procedures for medical records.

If an individual requests medical or psychological records pursuant to § 1070.53 of this subpart, the CFPB will disclose them directly to the requester unless the CFPB determines that such disclosure could have an adverse effect on the requester. If the CFPB makes that determination, the CFPB shall provide the information to a licensed physician or other appropriate representative that the requester designates, who shall disclose those records to the requester in a manner he or she deems appropriate.

§ 1070.56 Request for amendment of records.

(a) *Procedures for making request.* (1) If an individual wishes to amend a record that pertains to that individual in a system of records, that individual may submit a request in writing or by electronic means to the Chief Privacy Officer, as set forth in § 1070.53(a). The request shall be labeled ''Privacy Act Amendment Request.''

(2) A request for amendment of a record must:

(i) Identify the system of records containing the record for which amendment is requested;

(ii) Specify the portion of that record requested to be amended; and

(iii) Describe the nature and reasons for each requested amendment.

(3) When making a request for amendment of a record, the CFPB will require a requester to verify his or her identity under the procedures set forth in § 1070.53(c) of this subpart, unless the requester has already done so in a related request for access or amendment.

(b) *Burden of proof.* In a request for amendment of a record, the requester bears the burden of proving by a preponderance of the evidence that the record is not accurate, relevant, timely, or complete.

§ 1070.57 CFPB review of a request for amendment of records.

(a) *Time limits.* The CFPB will acknowledge a request for amendment of records within ten (10) business days after it receives the request. In the acknowledgment, the CFPB may request additional information necessary for a determination on the request for amendment. The CFPB will make a determination on a request to amend a record promptly.

(b) *Contents of response to a request for amendment.* When the CFPB responds to a request for amendment, the CFPB will inform the requester in writing whether the request is granted or denied, in whole or in part. If the CFPB grants the request, it will take the necessary steps to amend the record and, when appropriate and possible, notify prior recipients of the record of its action. If the CFPB denies the request, in whole or in part, it will inform the requester in writing:

(1) Why the request (or portion of the request) was denied;

(2) That the requester has a right to appeal; and

(3) How to file an appeal.

§ 1070.58 Appeal of adverse determination of request for access or amendment.

(a) *Appeal.* A requester may appeal a denial of a request made pursuant to §§ 1070.53 or 1070.56 of this subpart within ten (10) business days after the CFPB notifies the requester that it has denied the request.

(b) *Content of Appeal.* A requester may submit an appeal in writing or by electronic means as set forth in § 1070.53(a). The appeal shall be addressed to the General Counsel and labeled ''Privacy Act Appeal.'' The appeal must also:

(1) Specify the background of the request; and

(2) Provide reasons why the requester believes the denial is in error.

(c) *Determination.* The General Counsel will make a determination as to whether to grant or deny an appeal within thirty (30) business days from the date it is received, unless the General Counsel extends the time for good cause.

(1) If the General Counsel grants an appeal regarding a request for amendment, he or she will take the necessary steps to amend the record and, when appropriate and possible, notify prior recipients of the record of its action.

(2) If the General Counsel denies an appeal, he or she will inform the requester of such determination in writing, including the reasons for the denial, and the requester's right to file a statement of disagreement and to have a court review its decision.

(d) *Statement of disagreement.* (1) If the General Counsel denies an appeal regarding a request for amendment, a requester may file a concise statement of disagreement with the denial. The CFPB will maintain the requester's statement with the record that the requester sought to amend and any disclosure of the record will include a copy of the requester's statement of disagreement.

(2) When practicable and appropriate, the CFPB will provide a copy of the statement of disagreement to any prior recipients of the record.

§ 1070.59 Restrictions on disclosure.

The CFPB will not disclose any record about an individual contained in a system of records to any person or agency without the prior written consent of that individual unless the disclosure is authorized by 5 U.S.C. 552a(b). Disclosures authorized by 5 U.S.C. 552a(b) include disclosures that are compatible with one or more routine uses that are contained within the CFPB's Systems of Records Notices, which are available on the CFPB's Web site, at *http://www.consumerfinance.gov*.

§ 1070.60 Exempt records.

(a) *Exempt systems of records.* Pursuant to 5 U.S.C. 552a(k)(2), the CFPB exempts the systems of records listed below from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G)–(H), and (f), and §§ 1070.53 through 1070.59 of this subpart, to the extent that such systems of records contain investigatory materials compiled for law enforcement purposes, provided, however, that if any individual is denied any right, privilege, or benefit to which he or she would otherwise be entitled under Federal law, or for which he or she would otherwise be eligible as a result of the maintenance of such material, such material shall be disclosed to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the CFPB under an express promise that the identity of the source would be held in confidence:

(1) CFPB.002 Depository Institution Supervision Database

(2) CFPB.003 Non-Depository Institution Supervision Database

(3) CFPB.004 Enforcement Database

(4) CFPB.005 Consumer Response System

(b) *Information compiled for civil actions or proceedings.* This subpart does not permit an individual to have access to any information compiled in reasonable anticipation of a civil action or proceeding.

§ 1070.61 Training; rules of conduct; penalties for non-compliance.

(a) *Training.* The Chief Privacy Officer shall institute a training program to instruct CFPB employees and employees of Government contractors covered by 5 U.S.C. 552a(m), who are involved in the design, development, operation, or maintenance of any CFPB system of records, on a continuing basis with respect to the duties and responsibilities imposed on them and the rights conferred on individuals by the Privacy Act, the regulations in this subpart, and any other related regulations. Such training shall provide suitable emphasis on the civil and criminal penalties imposed on the CFPB and the individual employees by the Privacy Act for non-compliance with specified requirements of the Act as implemented by the regulations in this subpart.

(b) *Rules of conduct.* The following rules of conduct are applicable to employees of the CFPB (including, to the extent required by the contract or 5 U.S.C. 552a(m), Government contractors and employees of such contractors), who are involved in the design, development, operation or maintenance of any system of records, or in maintain any records, for or on behalf of the CFPB.

(1) The head of each office of the CFPB shall be responsible for assuring that employees subject to such official's supervision are advised of the provisions of the Privacy Act, including the criminal penalties and civil liabilities provided therein, and the regulations in this subpart, and that such employees are made aware of their individual and collective responsibilities to protect the security of personal information, to assure its

accuracy, relevance, timeliness and completeness, to avoid unauthorized disclosure either orally or in writing, and to insure that no system of records is maintained without public notice.

(2) Employees of the CFPB involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record shall:

(i) Collect no information of a personal nature from individuals unless authorized to collect it to achieve a function or carry out a responsibility of the CFPB;

(ii) Collect information, to the extent practicable, directly from the individual to whom it relates;

(iii) Inform each individual asked to supply information, on the form used to collect the information or on a separate form that can be retained by the individual of—

(A) The authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;

(B) The principal purpose or purposes for which the information is intended to be used;

(C) The routine uses which may be made of the information, as published pursuant to 5 U.S.C. 552a(e)(4)(D); and

(D) The effects on the individual, if any, of not providing all or any part of the requested information.

(iv) Not collect, maintain, use or disseminate information concerning an individual's religious or political beliefs or activities or membership in associations or organizations, unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity;

(v) Advise their supervisors of the existence or contemplated development of any record system which is capable of retrieving information about individuals by individual identifier;

(vi) Assure that no records maintained in a CFPB system of records are disseminated without the permission of the individual about whom the record pertains, except when authorized by 5 U.S.C. 552a(b);

(vii) Maintain and process information concerning individuals with care in order to insure that no inadvertent disclosure of the information is made either within or without the CFPB;

(viii) Prior to disseminating any record about an individual to any person other than an agency, unless the dissemination is made pursuant to 5 U.S.C. 552a(b)(2) of this section, make reasonable efforts to assure that such records are accurate, complete, timely, and relevant for agency purposes; and

(ix) Assure that an accounting is kept in the prescribed form, of all dissemination of personal information outside the CFPB, whether made orally or in writing, unless disclosed under 5 U.S.C. 552 or subpart B of this part.

(3) The head of each office of the CFPB shall, at least annually, review the record systems subject to their supervision to insure compliance with the provisions of the Privacy Act of 1974 and the regulations in this subpart.

§ 1070.62 Preservation of records.

The CFPB will preserve all correspondence pertaining to the requests that it receives under this part, as well as copies of all requested records, until disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 14. Records will not be disposed of or destroyed while they are the subject of a pending request, appeal, proceeding, or lawsuit.

§ 1070.63 Use and collection of social security numbers.

The CFPB will ensure that employees authorized to collect information are aware:

(a) That individuals may not be denied any right, benefit, or privilege as a result of refusing to provide their social security numbers, unless the collection is authorized either by a statute or by a regulation issued prior to 1975; and

(b) That individuals requested to provide their social security numbers must be informed of:

(1) Whether providing social security numbers is mandatory or voluntary;

(2) Any statutory or regulatory authority that authorizes the collection of social security numbers; and

(3) The uses that will be made of the numbers.

Dated: January 15, 2013.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2013–01737 Filed 2–14–13; 8:45 am]

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Part VI

Department of Health and Human Services

42 CFR Part 71

Control of Communicable Disease; Foreign—Requirements for Importers of Nonhuman Primates (NHP); Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 71

[Docket No. HHS/CDC–2011–0001]

RIN 0920–AA23

Control of Communicable Disease; Foreign—Requirements for Importers of Nonhuman Primates (NHP)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), is amending regulations for the importation of live nonhuman primates (NHPs) by extending existing requirements for the importation of *Macaca fascicularis* (cynomolgus), *Chlorocebus aethiops* (African green), and *Macaca mulatta* (rhesus) monkeys to all NHPs with the exception of the filovirus testing requirement. Filovirus testing will only be required for Old World NHPs in quarantine that have illness consistent with filovirus infection or that die for any reason other than trauma during quarantine. HHS/CDC is also finalizing a provision to reduce the frequency at which importers of cynomolgus, African green, and rhesus monkeys are required to renew their special permits (from every 180 days to every 2 years). HHS/CDC is incorporating existing guidelines into the regulations and adding new provisions to address the following: NHPs imported as part of an animal act; NHPs imported or transferred by zoological societies; the transfer of NHPs from approved laboratories; and non-live imported NHP products. Finally, HHS/CDC is also requiring that all NHPs be imported only through ports of entry where a HHS/CDC quarantine station is located.

DATES: This final rule is effective April 16, 2013.

FOR FURTHER INFORMATION CONTACT: Ashley A. Marrone, J.D., Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop E–03, Atlanta, Georgia 30333, telephone, 404–498–1600.

SUPPLEMENTARY INFORMATION: This final rule is organized as follows:

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I. Background

A. What is the risk to human health from NHPs?

NHPs, particularly those recently captured in the wild, may harbor agents infectious to humans. Although such infectious agents, if present, are usually detectable in the NHP's blood, they also may be detected in secreted bodily fluids such as urine, feces, or saliva. Due to the nature of the job, persons working in temporary and long-term holding facilities and those involved in transporting NHPs (*e.g.,* cargo handlers and inspectors) are especially at risk for infection. NHPs are a potential source of pathogens and communicable or zoonotic disease that may be fatal to humans, including filoviruses, hepatitis, herpes B virus, tuberculosis (TB), and parasitic infections (National Research Council, 2003). Quarantine requirements for imported NHPs are designed to reduce this communicable disease risk.

B. What is the legal authority for this rulemaking?

Section 361 of the Public Health Service Act (PHSA) (42 U.S.C. 264) authorizes the Secretary of the Department of Health and Human Services (HHS) to make and enforce regulations as may be necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States or from one State or possession to another. Section 361 of the PHSA also provides that, as the Secretary deems necessary, such regulations may provide for inspection and destruction of animals or articles found to be infected or contaminated as a source of dangerous infection. Section 361 of the PHSA serves as the primary legal authority for 42 CFR 71.53, regarding the importation of NHPs.

Section 368 of the PHSA (42 U.S.C. 271) sets forth penalties for violations of any regulations prescribed under section 361 of the PHSA. Under section 368(a) of the PHSA, any person who violates a regulation prescribed under section 361 of the PHSA may be punished by a fine up to $1,000 or by imprisonment for up to 1 year, or both [42 U.S.C. 271(a)]. These penalties are strengthened under the sentencing classification provisions of 18 U.S.C. sections 3559 and 3571, which provide for more strict penalties for criminal violations that would otherwise be classified as Class A misdemeanors. Individuals may be punished by a fine of up to $100,000 per violation not resulting in the death of an individual, or up to $250,000 per violation resulting in the death of an individual [18 U.S.C. 3559, 3571(b)]. Organizations may be fined up to $200,000 per violation not resulting in the death of an individual and $500,000 per violation resulting in the death of an individual [18 U.S.C. 3559, 3571(c)]. These penalties are criminal in nature and would thus be imposed by a court, not administratively by HHS or HHS/CDC.

C. What is the history of this rulemaking?

To address the risk NHPs pose to humans, since October 10, 1975, HHS/CDC has prohibited the importation of NHPs except for scientific, educational, or exhibition purposes (42 CFR 71.53). NHP importers have been required to register with HHS/CDC, renew this registration every 2 years, and hold NHPs in quarantine for a minimum of 31 days following entry into the United States. Importers also must maintain records on imported NHPs; immediately report illness suspected of being communicable to humans; and make their facilities, vehicles, equipment, and business records used in the importation of NHPs available to HHS/CDC during operating business days and hours, and at other ''necessary and reasonable times,'' to enable HHS/CDC to ascertain compliance with the regulations in this section.

Additional requirements for importers of NHPs have been developed and implemented in response to specific public health threats, including interim guidelines for handling NHPs during transit and quarantine (HHS/CDC Update: Ebola-Related, 1990) issued following a 1990 incident involving identification of Ebola virus (Reston strain) among NHPs imported from the Philippines. As a result of this incident, HHS/CDC concluded that cynomolgus, African green, and rhesus monkeys were capable of being an animal host or vector of filovirus which may pose a threat to human health. On April 20, 1990, HHS/CDC published a notice in the **Federal Register** requiring a special permit for importing cynomolgus, African green, and rhesus monkeys (55 FR 15210, April 20, 1990), with enhanced requirements for the granting of a special permit to import these species, including submitting a plan to HHS/CDC every 180 days describing specific isolation, quarantine, and disease control measures and detailing measures to be carried out at every step of the chain of custody, from embarkation at the country of origin, through delivery of the NHPs and the completion of the required quarantine period. Importers also were required to describe and implement testing procedures for all quarantined NHPs to rule out the possibility of filovirus infection.

Over time, HHS/CDC revised components of the special permit requirement in response to surveillance findings and the development of improved laboratory tests. HHS/CDC informed covered importers of these changes by letter in 1991 (Roper, 1991). The special permit notice required filovirus antigen-capture testing on specimens from any NHP that died during quarantine for reasons other than trauma, and filovirus antibody testing of a serum sample taken at the end of quarantine before a cohort is released from quarantine on any NHPs that recover from illness consistent with a possible filovirus infection during quarantine (Tipple, 1996).

On July 30, 1993, HHS/CDC published guidelines in the *Morbidity and Mortality Weekly Report* (*MMWR*) for TB testing requirements for NHPs, following the recognition of TB in up to 2% of imported NHPs and the risk for TB infection posed to caretakers (HHS/CDC, 1993). These published requirements included provisions for recordkeeping to track and trace NHPs and for use of personal protective equipment (PPE) by NHP handlers to prevent transmission of TB (HHS/CDC, 1993). Since publishing the guidelines in the *MMWR,* HHS/CDC has required a minimum of three negative tuberculin skin tests (TSTs) administered at 2-week intervals, on each imported NHP before approving release of any NHPs from quarantine.

On February 12, 2013, HHS/CDC published a final rule at 78 FR 9828 establishing a user fee for filovirus testing of all nonhuman primates that die during the HHS/CDC-required 31-day quarantine period for any reason other than trauma. This provision was initially designated in the NPRM at § 71.53(j). Because HHS/CDC had already published its proposal for a filovirus user fee, we did not solicit or receive additional comment on this proposal through this current rulemaking. Through today's final rule, we are renumbering the filovirus user fee provision as § 71.53(v). HHS/CDC is making this non-substantive change to increase the functionality and ease of use of these regulations.

II. Summary of the Proposed Rule Requirements

In the January 5, 2011, NPRM, HHS/CDC proposed to continue, in § 71.53(d), the long-standing general prohibition on importing NHPs, and to reflect, in § 71.53(e), its authority to require disposal of prohibited or excluded NHPs. HHS/CDC also proposed a list of definitions specific to modern importation principles and practices for NHPs, including adding new definitions and revising existing ones, to add clarity to the provisions regulating the importation of NHPs.

Additionally, HHS/CDC proposed to expand the isolation, quarantine, and worker protection requirements; and to expand the registration process described in the special permit requirements for cynomolgus, African green, and rhesus monkeys to all importations of NHPs. HHS/CDC intended that the proposed changes would simplify importer registration procedures and provide an enhanced measure of worker and NHP safety against known and emerging zoonotic diseases.

HHS/CDC intended to achieve its regulatory objectives through a performance-based standard focusing on desired characteristics of the regulated activities, rather than a prescriptive standard for conducting those activities. The Agency endeavored to allow regulated entities flexibility in choosing how to meet the standard's goals and objectives.

To extend the public health benefits of the special permit requirements regarding identifying filovirus infections, HHS/CDC proposed extending filovirus testing to include all Old World NHPs in quarantine that have illness consistent with filovirus infection or that die for any reason other than trauma during quarantine. This requirement was proposed because Old World NHPs are susceptible to filovirus infection and they originate from areas of the world where filoviruses have caused fatal disease in NHPs. Consequently, surveillance for filovirus infection would include not just the species covered under the special permit requirements, but all newly imported Old World primates (unpublished data, HHS/CDC; Formenty, *et al.,* 1999; Rollin, *et al.,* 1999, Rouquet, *et al.,* 2005; Leroy, *et al.,* 2004).

Also in keeping with the special permit requirements, HHS/CDC proposed under paragraph (h) to require that NHP importers develop a written policy for ensuring that imported NHPs and their offspring would be used and distributed only for the permitted purposes defined in the regulation. HHS/CDC proposed requiring importers to keep written certifications that would follow the NHP for life and demonstrate the continued use of the NHPs and any offspring only for permitted purposes. The intended purpose of this requirement was to ensure that NHPs are not diverted into the pet trade, subsequently placing individuals at risk of contracting zoonotic diseases that NHPs may carry.

Under proposed paragraph (h) importers would be required to maintain these records in an organized manner, and in a central location, which is at or in close proximity to the NHP facility, to allow HHS/CDC to inspect the records during regular business hours or within one hour of HHS/CDC site visits. Proposed § 71.53(g)(1) would require any importer to establish, implement, and maintain documentation and standard operating procedures (SOPs) associated with the importation of NHPs. HHS/CDC's proposal included performance-based requirements for worker education concerning risks, exposure notification and reporting, PPE, development of SOPs, TB and other diagnostic testing, post-exposure procedures, and other requirements for the development and implementation of a plan sufficient, as determined by HHS/CDC, for protecting workers from the risks associated with handling NHPs.

The proposed rule contained quarantine provisions, including a 31-day period of quarantine at a U.S. quarantine facility, with possible extensions of quarantine if the NHPs showed infection with certain communicable diseases, if the importer or HHS/CDC suspected that an NHP was infected with certain communicable diseases, or if the importer or HHS/CDC determined that there was a need for additional diagnostic testing. Additionally, HHS/CDC proposed to eliminate the 31-day quarantine requirement and associated restrictions for transfers of NHPs into the United States between Association of Zoos and Aquariums (AZA)-accredited zoos. HHS/CDC proposed a similar quarantine exception for transfers of NHPs from laboratories accredited by the Association for Assessment and Accreditation of Laboratory Animal Care International (AAALAC) or its equivalent, if the laboratory has a foreign-based and a U.S.-based facility and the NHP is part of an ongoing research project. The proposed procedures and standards contained in § 71.53(l) were based on procedures and standards of the National Research Council (NRC), HHS/CDC biosafety guidelines, current knowledge of infectious agent transmission routes, and experience gained from investigating filovirus infection outbreaks (HHS/CDC, 1996; HHS/CDC, 1989).

Other quarantine requirements proposed in § 71.53(l) addressed routine veterinary medical care and screening for zoonotic diseases of NHPs in quarantine, management of illnesses and deaths of unknown etiology, written protocols for the evaluation and diagnostic testing of suspect cases of zoonotic disease in NHPs, and improved surveillance and testing procedures in NHP quarantine and research facility settings. The proposed requirements for SOPs and equipment for crating, caging, and transporting NHPs in § 71.53(j) outlined the requirements that the importer must meet, either directly or by contractual or other arrangement, to ensure safe handling of NHPs during transportation. The proposed procedures included preventing contamination of other articles and cargo during transportation; providing physical separation of crates from other cargo; and ensuring decontamination of aircraft, ships, vehicles, and related equipment following NHP transport. In addition, in § 71.53(f), HHS/CDC proposed to restrict entry of NHPs into the United States to those ports of entry where HHS/CDC quarantine stations are located, except in limited circumstances approved in advance by HHS/CDC. In § 71.53(k), HHS/CDC proposed that an importer establish, implement, maintain, and adhere to SOPs for ground vehicles to ensure the safe transport of NHPs to quarantine facilities, and ensure that pre-quarantined NHPs posed no risk to human health. Under proposed § 71.53(m), an importer would have to notify HHS/CDC of certain events listed in the paragraph within the designated time period. For example, proposed § 71.53(m)(6) would require an importer to report to HHS/CDC within 48 hours any positive or suspicious TST results, necropsy findings, or laboratory results. In addition to the NHP health-reporting requirements in § 71.53(m), HHS/CDC proposed 19 general reporting and recordkeeping requirements in § 71.53(n), with which the importer would have to comply.

Paragraph (g) *Registration or Renewal of Importers* requires all animal acts to comply with requirements in § 71.53(h) through (n). HHS/CDC proposed additional requirements for animal acts entering and re-entering the United States under proposed § 71.53(o). Under proposed paragraph (o)(1) of the animal act provision, a foreign-based importer would have to provide additional information and documentation to help identify the individual NHP and to describe the conditions under which the NHPs are housed in the United States, and maintain documentation signed by a licensed veterinarian attesting to the results of physical examinations for NHPs. Under proposed paragraph (o)(2) of that provision, the importer of a U.S.-based animal act would meet additional specified requirements when the animals re-enter the United States.

For those NHPs entering the United States under the zoo-to-zoo and laboratory-to-laboratory transfers exception, proposed § 71.53(p) and (q) set requirements for the recipient zoo or laboratory within the United States, including registration, submission of veterinary medical records that document an NHP's current and past health history, accreditation standards, and equivalency standards for zoos and aquariums. HHS/CDC also proposed requirements for brokers in the United States handling in-transit shipments of NHPs that have a layover or are detained or delayed at a U.S. airport. Finally, HHS/CDC proposed new procedures for revocation and reinstatement of an importer's registration [§ 71.53(s)] as well as requirements for importing untreated NHP products such as carcasses, trophies, blood, and other biological samples were proposed under § 71.53(t).

III. Comment Summary and Responses

A. General Opposition and Support

HHS/CDC received public comments from 23 individuals and entities to the January 5, 2011, NPRM. One commenter opposed the rule in its entirety, asserting that all imports of NHPs should be banned, irrespective of the purpose for which the NHP was imported. However, if such imports were permitted, this commenter said we should require a physical inspection of the importer's premise, the importer's fingerprints and picture identification, and posting of the importer's application forms on the web for public inspection.

HHS/CDC response. HHS/CDC is obligated to regulate animal imports to best protect public health and is satisfied that this final rule achieves this goal. Further, HHS/CDC maintains a very efficient and effective registration and oversight program for the importation of NHPs and the protection of public health, which includes a thorough review of all records and unannounced inspection of the premises in which the NHPs are kept during quarantine. We do not believe the addition of fingerprinting or picture identification is necessary or would improve oversight. Further, an importer's application contains proprietary information and therefore would not be appropriate for public display.

Several commenters expressed support for portions of the proposed rule. Eight commenters approved of extending the import requirements for special permit NHP importers to all importers, and four supported extending the period for permit renewal from 6 months to 2 years. Four commenters also supported easing the quarantine restrictions for zoo-to-zoo transfers of NHPs between zoos accredited by the AZA or an equivalent organization, and laboratory-to-laboratory transfers where the importer can document that the animals are part of a research project following Institutional Animal Care and Use Committee (IACUC)-approved protocols. One commenter supported the proposal to import shipments of NHPs only through ports of entry with HHS/CDC quarantine stations, and another supported the animal act provisions.

HHS/CDC Response. HHS/CDC has reviewed and considered all details of these comments and will discuss each in turn.

B. Public Comments Regarding Purpose and Scope

One commenter said that we should broaden the purpose provision in § 71.53(a) to include not only preventing the transmission of communicable disease and pathogens from imported NHPs to humans, but also preventing the importation of diseases and pathogens themselves.

HHS/CDC Response. NHPs are only one of the imports that HHS/CDC regulates to prevent the introduction of communicable disease. Specifically, the importation of pathogens is regulated under 42 CFR 71.54, Etiological agents, hosts, and vectors. Further, the HHS/CDC Director has broad general authority under 42 CFR 71.32(b) to take measures with regard to any carrier, article, or thing that may be contaminated with a communicable disease. Therefore, HHS/CDC does not believe it necessary to broaden the purpose and scope of this section.

This same commenter said we should broaden the scope provision in § 71.53(b) to include post-importation recipients of NHPs and the offspring of these NHPs, arguing that the proposal placed ''an unreasonable indirect enforcement burden on registered importers'' by requiring them to question their customers' intended use of the importer's products. The commenter recommended requiring prospective recipients of post-importation NHPs and their offspring to register with HHS/CDC, and maintain records regarding the use, distribution, and disposition of these animals.

HHS/CDC Response. Under § 71.53, HHS/CDC regulates the initial importation of NHPs into the United States. To be approved to register as an importer, an importer must agree to only distribute NHPs for a permitted purpose. The requirement that an importer retain records of distribution allows HHS/CDC to monitor this agreement to ensure importers are adhering to the distribution restrictions. Therefore, HHS/CDC believes that the current practice of holding the initial importer responsible for the transfer of an NHP for a permitted purpose is sufficient to protect the public's health and will remain in place.

Finally, a commenter suggested requiring that ''sanctuaries'' obtain a U.S. Department of Agriculture (USDA) license, HHS/CDC registration, or both, if the sanctuary is to receive or possess previously imported NHPs. The commenter asserted that such entities ''must agree not otherwise (to) dispose (of) or distribute said primates.''

HHS/CDC Response. HHS/CDC does not have the authority to require USDA to issue a license to an individual or entity. A ''sanctuary'' would fall under the definition of ''person,'' which means such entities fall under § 71.53(b) and the general prohibition in § 71.53 (d) against receiving, maintaining, or distributing an NHP for other than a permitted purpose. For clarity, we have revised the definition of ''person'' in § 71.53(c) to explicitly include not-for-profit organizations, such as sanctuaries. Finally, we note that in keeping with current practices, any ''person'' may submit an application to HHS/CDC to become a registered importer, including a sanctuary.

C. Public Comments Regarding Definitions

One commenter supported the definition of ''education and scientific purposes,'' saying that they had experienced problems with importers abusing the concept and endeavoring to bring NHPs into the United States by claiming the animals were purchased for a thesis. This commenter said that the proposed definition would ''prevent such an abuse.'' However, this commenter also noted that our proposed definition of ''trophy'' was broader than the same definition of this term in 50 CFR 23.74(b). Whereas the U.S. Fish and Wildlife Service (USFWS) defines a trophy as ''items taken as a result of sport-hunting,'' the commenter asserted that HHS/CDC's proposed definition included any such items ''purchased abroad that are display items,'' and noted that under the Convention on International Trade in Endangered Species (CITES), only an item resulting from a ''personal sport-hunt'' would be a trophy.

HHS/CDC Response. Regarding the comment on CITES requirements for any product defined by that agency as a ''sports-hunted trophy,'' we note that today's final rule provisions do not negate other federal requirements. However, we note, too, that our mandate to protect public health is different from the CITES program objective and requires targeting a broader class of imported NHP products. However, CDC agrees that our proposed definition of ''trophy'' may cause confusion among the regulated communities; therefore, we have introduced a new definition for product that includes sports-hunted trophies. Under this final rule, a ''product'' is defined as ''*skulls, skins, bodies, blood, tissues, or other biological samples from a nonhuman primate, including trophies, mounts, rugs, or other display items.*''

Any untreated NHP product poses a risk to human health, irrespective of whether the product is a trophy from a ''personal sport-hunt'' or from commercial or other activity, and would require the importer to obtain a permit from HHS/CDC before bringing the product into the United States. To import any NHP product, an importer must render the product noninfectious under a HHS/CDC approved method, or obtain a permit in advance from the Director of HHS/CDC.[1]

Other commenters addressed the definitions in § 71.53(c). Two argued that we should change the definition of ''zoonotic disease'' because the proposed definition was inconsistent with the background information in the NPRM and with the medical dictionary definition of the term. Instead, these commenters suggested we define the term as ''any infectious agent or communicable disease that is able to be transmitted from animals, both wild and domestic, to humans.''

Another commenter suggested revising four proposed definitions. First, the commenter recommended revising ''broker'' by adding ''of NHP from another country, or as an intermediary between such an'' immediately following ''official agent of an exporter'' and before ''exporter and an importer of NHPs.'' Second, the commenter recommended a new definition of ''cohort'' as ''a shipment or shipments of NHP that shared a confined space or close proximity (within 5 feet) during import into the United States and/or transit to the importer quarantine facility.'' Third, for clarity and specificity, this commenter said we should consider changing the term ''in transit'' to ''in international transit'' or ''in international transit within the U.S.'' Asserting that the definition for ''offspring'' lacked documentation criteria, the commenter suggested the fourth change of specifying minimum verification documentation in the definition.

HHS/CDC Response. To clarify many of the terms used in § 71.53, HHS/CDC has adopted most of the above commenter's suggestions. We did not change the term ''in transit'' because we believe the definition adequately specifies and clarifies HHS/CDC's intent.

A fifth commenter suggested adding a definition of ''unusually high morbidity,'' which the commenter argued was inadequately defined in the proposed documentation requirements

[1] *http://www.HHS/CDC.gov/animalimportation/laws regulations/nonhuman-primates/nprm/questions-answers-importers.html.*

in §§ 71.53(i) and 71.53(l). This same commenter said that in the notification requirements in § 71.53(m), ''the definition of 'severe' illness in this section is ambiguous.''

HHS/CDC Response. Regarding the comment on defining ''unusually high morbidity,'' we note that HHS/CDC did not propose use of the term in the regulatory text and therefore we do not believe that it is necessary to define it. Regarding the comment on notification requirements in § 71.53 (m), HHS/CDC has removed ''severe illness'' from this provision in the final rule to alleviate any ambiguity.

D. Public Comments Regarding Prohibition on Importing NHPs

Two commenters said we should expand the general prohibition on importing NHPs in § 71.53(d). One argued that expanding the prohibition would relieve the burdensome requirements imposed on importers. This commenter suggested adding a provision to prohibit persons from receiving ''post-importation NHPs'' unless the recipient was registered with HHS/CDC under § 71.53, and a provision like paragraph (d)(2) for importers, but instead addressed ''post-importation'' recipients of NHPs.

HHS/CDC Response. As noted above, under § 71.53, HHS/CDC regulates the initial importation of NHPs into the United States. To be approved to register as an importer, an importer must agree to only distribute NHPs for a permitted purpose. The requirement that an importer retain records of distribution allows HHS/CDC to monitor this agreement to ensure importers are adhering to the distribution restrictions. Therefore, the current practice of holding the initial importer responsible for the initial transfer of an NHP for a permitted purpose will remain in place.

One commenter suggested that we should expressly prohibit the importation of wild and feral NHPs because these animals represent serious risks to public health and animal welfare.

HHS/CDC Response. In § 71.53(d) of the final rule, HHS/CDC retains the general prohibition on the importation of live NHPs except for certain limited purposes. No matter its origin, there can be no question of an NHP coming into the United States without prior HHS/CDC review and issuance of a registration certificate, regardless of whether the animal is caught in the wild or raised in captivity, because live NHPs present the same potential for infectious disease outbreaks. Under § 71.53(g), each NHP importer must obtain registration from HHS/CDC before importing these animals.

HHS/CDC notes that since we established quarantine restrictions for NHPs in 1975, the number of HHS/CDC-registered NHP importers went from 140 (according to a 1989 review) to 27 in 1999 (Roberts, 2008), and the mortality rates for NHPs imported under a special permit during shipment and quarantine went from 20 percent to less than 1 percent (Roberts, 2008; DeMarcus, 1999) and has remained there (ILAR, 2006). These data indicate the efficacy of our certification process for NHP importers. Further, allowing NHP imports for specific and limited purposes under HHS/CDC authorization is consistent with the Executive Order 13656 section 1 directive of protecting public health with the ''least burdensome tools for achieving regulatory ends.''

E. Public Comments Regarding Authorized Points of Entry

Comments were received regarding the proposal in § 71.53(f) to require importation of live NHPs into the United States only through ports of entry with a HHS/CDC quarantine station, unless the importer received advance written approval from HHS/CDC for some other port of entry. One commenter asked that the preamble to the final rule discuss requirements in 50 CFR part 14 for NHP importers to obtain from USFWS a port-exception permit before a shipment entered the United States at Detroit, Dulles, El Paso, Minneapolis, San Diego, or San Juan. This commenter also noted that there are no USFWS staff at the port of entry in Philadelphia.

HHS/CDC Response. HHS/CDC is adopting the proposal that, absent prior approval, a shipment of live NHPs into the United States must come through ports of entry with a HHS/CDC quarantine station. In response to the comment on USFWS's requirements under 50 CFR part 14, in promulgating this final rule, HHS/CDC does not intend to supersede—and believes that these requirements are not inconsistent with—any applicable USFWS or USDA regulation nor any applicable state regulation. An importer must have a CITES permit to bring NHPs into the United States, and an importer in violation of otherwise applicable regulations is prohibited from importing NHPs. We will continue working with federal partners at ports of entry to ensure that the administrative burden on partner agencies is not unreasonable.

Another commenter opposed what they viewed as an exception for NHP shipments entering the United States at ''certain border crossing[s] from Canada and Mexico.'' Such an exception, asserted the commenters, ran contrary to our stated purpose for the port-of-entry requirement. These commenters said further that including shipments coming from U.S. border countries in the paragraph (f) requirement was logical, would have little economic impact given the few importers who ship NHPs across those borders, and would maintain public health and safety at the cost of a small inconvenience to importers.

HHS/CDC Response. HHS/CDC notes that there is no exception in the final rule from the port-of-entry requirement for over-the-road (OTR) shipments of NHPs coming from Canada or Mexico. A person importing NHPs from those countries either must bring the animals through ports of entry with a HHS/CDC quarantine station, or obtain prior Agency approval for bringing the shipment through an alternate U.S. port of entry. Further, HHS/CDC maintains public health safety through direct oversight of the importation, because a candidate for registration certification or renewal must allow HHS/CDC to inspect records, facilities, transport vehicles, and equipment during operating days and hours, and at other necessary and reasonable times. (See § 71.53(b)(1) and (g)(2)(i).)

F. Public Comments Regarding Importer Licensing Requirements

Commenters addressed the application and permit renewal proposals in § 71.53(g). Two commenters opposed eliminating the 180-day registration renewal requirement for special permit holders. Presenting several examples of alleged noncompliance and Animal Welfare Act violations by ''top NHP importation companies in the United States,'' one commenter argued that reducing government oversight of companies ''with documented histories of noncompliance'' would pose a serious threat to public health. Further, argued the commenter, there was no evidence in the record that the species subject to special permit requirements (cynomolgus, African green, and rhesus monkeys) present less of a threat to human health than they did when we first established the requirements in 1990. The same commenter asserted we failed to make the case that moving to a 2-year renewal period would be in the best interest of public health.

HHS/CDC Response. HHS/CDC is adopting the proposal to extend the time for special permit renewal from every 180 days to every 2 years. We believe that the concern about the reduction in government oversight is misplaced, because registration is only part of the oversight of importers. Importers must continue to notify HHS/CDC of all shipments and we will continue to perform regular site visits, including the review of importer SOPs.

Indeed, there is constant communication between HHS/CDC and importers. Further, extending the renewal period is consistent with the directive in Executive Order 13653 section 1 that we apply the least burdensome tools for achieving regulatory ends.

An individual commenter suggested changes to three of the proposed paragraphs in (g)(1). The first suggestion was to change paragraph (g)(1)(ii) to state that an applicant must submit a completed statement of the intended permitted purpose for which an NHP is imported and must name any ''intended prospective post-importation recipients.'' The second was to remove the requirement in proposed (g)(1)(iii) for applicants to submit ''a copy of all'' SOPs. The final suggestion was to add in proposed (g)(1)(iv) a requirement for applicants to submit ''copies of all Federal, State, or local registrations.''

HHS/CDC Response. HHS/CDC does not believe it is reasonable to require importers to submit ''prospective'' recipients of NHPs. HHS/CDC routinely audits importer records to verify that distribution is for permitted purposes. As part of this oversight, HHS/CDC will continue to require importers to submit copies of all SOPs. However, in response to the commenter's third suggestion, the final rule will require a copy of all federal, state, or local registrations, licenses, and/or permits.

Another commenter said that HHS/CDC should require applicants for an importer license or license renewal to submit the documentation required under § 71.53(i) for worker protection and § 71.53(l) quarantine facilities as part of the permit application process.

HHS/CDC Response. We have added clarifying language to the title and throughout § 71.53(g) of the final rule to make it clear that the same documentation is needed to apply for registration or renewing a registration certificate for importing NHPs.

G. Public Comments Regarding Recordkeeping, Reporting, and Notification Requirements

Several commenters discussed various proposed recordkeeping, reporting, and notification requirements in § 71.53(h), (i), (k), (m), and (n).

An individual suggested that we change paragraph § 71.53(h) to require that importers develop and document compliance with a written policy; revise § 71.53(h)(2) to require that importers collect or create records of the intended purpose for imported NHPs and maintain records regarding each distribution of imported primates; and clarify in § 71.53(h)(3) how an importer must authenticate electronic records, if HHS/CDC would permit such records.

HHS/CDC Response. Each HHS/CDC-registered NHP importer is subjected to periodic, mandatory site visits. During these site visits, HHS/CDC staff assesses compliance with recordkeeping requirements. Importers are also required to provide HHS/CDC staff with an intended-use statement for each NHP that was distributed following HHS/CDC quarantine. Failure to comply with these recordkeeping requirements may result in suspension or forfeiture of an importer's HHS/CDC registration. HHS/CDC also agrees that there should be a requirement for time-dating of electronic records in a manner that cannot be altered, and for back-up copies of such records. We have revised § 71.53(h)(3) accordingly.

One commenter expressed general support for the proposed reporting requirements and asked that we notify USFWS if we receive disease reports from importers that might raise concerns about its wildlife inspections.

HHS/CDC Response. With regard to the commenter's request that USFWS ''receive disease reports from importers that might raise concerns about its wildlife inspections,'' HHS/CDC routinely informs USFWS of ongoing potentially life-threatening disease outbreaks occurring among USFWS-licensed facilities.

The same commenter strongly recommended that HHS/CDC require tattoos or microchip numbers for NHPs to better identify animals involved in a transfer or transaction.

HHS/CDC Response. Paragraph (l)(3)(i) of this final rule requires importers to ensure that all NHPs are identified individually with a unique number or alphanumeric code permanently applied to the NHP. However, consistent with our intent to set performance-based requirements, the rule does not require one specific identification yet allows the importer to select a ''tattoo, microchip, or other permanent identifier.'' This requirement ensures that NHPs may be identified in any transfer or transaction.

The January 2011 NPRM specifically solicited public comment on how long records should be maintained by the importer, *e.g.,* for the expected life of the NHP. One commenter said that, as written, § 71.53(h) failed to indicate how long an importer must maintain documentation, and suggested a retention period similar to existing USDA requirements (*i.e.,* 3 years after disposition). Two commenters asserted that the retention period under paragraph (h) should be at least for the life of the animal, plus a post-mortem period to investigate disease outbreaks or rules violations. One commenter agreed that the retention period for § 71.53(h) documentation should be for the life of the NHP.

HHS/CDC Response. HHS/CDC agrees with commenters' concern that there should be a specified period for which an importer must keep the written certifications required under § 71.53(h)(1), and has revised the final rule to specify the period of record retention as 3 years after distribution or transfer of the animal. In § 71.53(h)(2) of the final rule, HHS/CDC also clarifies its intention for importers to maintain records regarding each distribution of primates for the required 3-year period, including information identifying each animal in a shipment. We believe these retention periods are sufficient for protecting public health and tracking NHPs after their release from quarantine, and that it is overly burdensome to require record retention for the life of an NHP and a period after death, as some commenters suggested.

Another commenter asked whether importers must document the intended purpose for the life of the NHP, what the effects would be if there were subsequent movements of the NHP within the United States, and whether paragraph (h) applied to offspring of imported NHPs.

HHS/CDC Response. HHS/CDC has revised § 71.53(h) to state expressly that an importer must develop and document compliance with a written policy for use and distribution of NHPs and their offspring. Paragraph (h)(1) also makes clear that it is the importer's obligation to collect a signed record of the intended purpose for which NHPs are imported from the customer, and to take reasonable steps to ensure that its customers will use NHPs in accordance with Part 71. These records must be retained for three years after distribution. The original importer is not responsible for documenting subsequent movements of the NHP beyond the initial transfer. Again, this is a codification of the accepted current practice that importers only distribute NHPs for scientific, educational, or exhibition purposes as defined in this final rule.

One commenter requested clarification on proposed required certifications under paragraph (h)(5), and asked how HHS/CDC would monitor, track, and record these certifications; how often the importer should provide us with certifications; and how subsequent movement of NHPs and their offspring would affect the certifications. Another commenter said they were uncertain whether the sellers needed to verify the authority of the person who certifies use of primates at the purchasing institution, and said they were against imposing a requirement on the seller other than maintaining certification from the consignee.

HHS/CDC Response. Regarding the comment on how we would receive and track certifications under proposed § 71.53(h)(5) (not adopted under the final rule), we note that the intent of the final requirements under paragraph (h) is for the importer to retain the records, not to send them to HHS/CDC. HHS/CDC will review certifications in person and regularly through an audit process yet does not expect importers to certify the authority of the signatory beyond normal due diligence. An example of due diligence would be for the importer to include a statement of authority on the certification form.

Two commenters commented on the proposed requirement in § 71.53(i)(3) on notification to HHS/CDC of a worker's exposure to a zoonotic illness. The commenters said we should change this provision to make it consistent with other, similar reporting requirements. Specifically, said the commenters, the provision should read, ''An importer must immediately contact HHS/CDC by telephone, SMS text, or email, as specified in the importer's standard operating procedures, to report any instance of a worker exposed to a zoonotic illness and must include instructions for contacting HHS/CDC in its worker protection plan.'' For the same reason, the commenters suggested revising the sentence on notification in § 71.53(i)(9) to read as follows: ''The importer must promptly notify HHS/CDC by telephone, SMS text, or email as specified in the importer's standard operating procedures if such illness occurs.''

These same commenters suggested revising § 71.53(k)(5) to permit notifying HHS/CDC of the arrival of an NHP shipment by SMS text or email as specified in the importer's SOPs. They also requested that HHS/CDC should permit written notice by email in notification requirements before authorizing the import of NHPs in § 71.53(n)(2).

HHS/CDC Response. HHS/CDC agrees with the commenters and has revised the text of the final rule to expressly permit notifying the Agency by telephone, text message, or email of worker exposure to a zoonotic illness.

Other commenters addressed the proposed health reporting requirements in § 71.53(m). One commenter questioned the proposal in paragraph (m)(4) that an importer must notify HHS/CDC if the mortality of an NHP cohort exceeds 5 percent. The commenter said this threshold could preclude the earliest detection of outbreaks or identification of associations between cases, and argued that we should establish an evidence-based, risk-averse threshold through epidemiological analysis and other available data.

Regarding the proposal in paragraph (m)(7) that an importer notify HHS/CDC within 48 hours if an NHP exhibits signs of TB, four commenters asserted the reporting period should be 24 hours. These commenters said that because TB is extremely communicable and highly dangerous to humans, it was ''nonsensical'' to have a reporting period that is double that for reporting other zoological diseases. The commenter said that although paragraph (m) stated proposed notification requirements for six events, the failure to define what would constitute a ''severe'' illness made the provision ambiguous, and difficult to either comply with or enforce.

HHS/CDC Response. In § 71.53(m)(2), the final rule requires notifying the Agency of any morbidity or mortality of animals in quarantine, rather than of ''severe illness or death'' as proposed. Similarly, § 71.53(m)(4) of the final rule removes the 5 percent threshold for notifying HHS/CDC of morbidity or mortality in a shipment between embarkation from the county of origin through release from quarantine in the United States. Instead, as with paragraph (m)(2), the rule requires notification of any morbidity or mortality during the period described. As to the comment that we set an evidenced-based threshold for reporting mortality, we noted previously that the mortality rates for special permit process NHPs during shipment and quarantine has been less than 1 percent over the last 5 years (Roberts, 2008; DeMarcus, 1999). Therefore, requiring notification of *any* morbidity or mortality sets a conservative, evidence-based reporting standard. Further, we have set a more conservative 24-hour requirement in § 71.53(m)(7) for notifying the Agency of positive or suspicious TST results as most protective of human health. All notification periods in § 71.53(m) are now 24 hours.

These commenters also suggested that notification requirements in proposed § 71.53(p)(2)(i) and (ii) for zoo-to-zoo transfers mirror the requirements for laboratory-to-laboratory transfers in proposed § 71.53(q)(2)(i) and (ii).

HHS/CDC Response. HHS/CDC agrees that notification requirements should be the same for laboratory-to-laboratory transfers as for zoo-to-zoo transfers and has edited the text of the final rule accordingly.

H. Public Comments Regarding Worker Protection Requirements

Commenters addressed the training, notification, and SOP requirements in proposed § 71.53(i). One commenter said HHS/CDC should specify a maximum interval between training sessions. Two commenters said we should require employee training on post-exposure procedures when the employee is hired and at least annually thereafter. One commenter suggested that worker training include contingency plans to prevent exposure to NHPs during transit.

HHS/CDC Response. HHS/CDC agrees with the comment that worker training requirements should specify when workers should receive initial training and the maximum acceptable interval between trainings. NHP workers should receive initial training when they are hired or before receiving a shipment of NHPs, and refresher training at least annually. However, because each facility varies in size and importation frequency, we have decided to evaluate training frequency upon review of importer application and SOPs, in keeping performance based standard of review. This policy of review also addresses another commenter's concern for refresher training on post-exposure procedures. As stated in § 71.53(i)(4)(i), worker protection plan training must include how to avoid and respond to disease exposures associated with NHPs. Plans for refresher and contingency training should also be included in these SOPs.

One commenter fully supported the proposed plans for importers, and especially noted his or her appreciation of the worker PPE requirements for employees who handle live NHPs, which the commenter said, would benefit USFWS inspectors. This commenter added a request that we notify the USFWS-Office of Law Enforcement of our concerns with their inspectors who might be responsible for inspecting a shipment of wildlife later found to be a source of TB exposure.

HHS/CDC Response. We will continue to work with and communicate with our federal partners whose employees may be exposed to NHPs while inspecting animal shipments to ensure awareness of any health concerns, including the potential for exposure to TB. We note that USFWS inspectors, as with all individuals, should be wearing appropriate eye and respiratory protection when handling or within five feet of the live NHP shipments.

Another commenter asked why we recommended hepatitis B vaccine rather than hepatitis A vaccine, asserting that animals frequently arrive in quarantine with naturally occurring positive titers of hepatitis A, and that hepatitis A is a disease commonly found throughout the world, including the United States.

HHS/CDC Response. In the NPRM, CDC did not recommend specific vaccines as part of the worker protection plan. HHS/CDC recommends that all workers who are at high risk of exposure to NHPs be current on routine vaccinations, in accordance with good public health practice and as reflected in the Advisory Committee on Immunization Practices [2] recommendations.

I. Public Comments Regarding Equipment, Transfer/Transport, and Handling

Commenters discussed the proposed requirements in § 71.53(j) and § 71.53(k) for NHP equipment, processing, transport, and identification. An individual commenter made several comments concerning these proposed provisions. The commenter described as ''unrealistic'' the proposed requirement in paragraph (j)(5) that only an importer or an authorized representative could receive a shipment of NHPs. For airplanes, said the commenter, a plane will not wait if there is no one present who has authority to take receipt of the shipment under this requirement. Instead, said the commenter, HHS/CDC should require a contingency plan to address Agency concerns.

HHS/CDC Response. HHS/CDC made a number of changes to the final rule in response to comments on the proposed standard operating requirements and equipment standards for crating, caging, and transporting live NHPs. We have deleted proposed paragraph (j)(4), and renumbered proposed paragraphs (j)(5) through (j)(13) as (j)(4) through (j)(12) in the final rule. Paragraph (j)(4) of the final rule requires an importer to establish an emergency contingency plan in the unlikely event that the importer or its representative is unable to meet the conveyance transporting an NHP shipment. This change makes clear HHS/CDC's intent that importers should anticipate and plan for contingencies.

[2] *http://www.HHS/CDC.gov/vaccines/recs/acip.*

Similarly, the commenter described as ''unrealistic'' our proposal in paragraph (j)(8) that during NHP transport, recirculated air in the NHP compartment must be HEPA-filtered, given that neither planes nor commercial OTR trucks commonly are equipped with such air-filter systems for cargo. Regarding our proposal in paragraph (j)(9) concerning cargo loading of NHP shipments, this individual said importers have little control over aircraft loading procedures, and cannot enforce loading requirements. The individual suggested we work with the International Air Transport Association (IATA). For paragraph (j)(11), the commenter suggested beginning the provision with, ''For each importation itinerary,'' arguing that without this language, we would require monitoring and certification during each shipment. Finally, regarding paragraphs (j)(13) and (k)(3), this individual suggested we expressly require the removal of potentially contaminated material from ground transport vehicles ''upon arrival at the quarantine facility,'' and the appropriate disposal of biohazardous waste.

HHS/CDC Response. HHS/CDC recognizes that while the importer may not have control over how a plane is loaded at the port of destination, importer SOPs should include information for training of airport cargo handlers regarding the importance of loading NHPs into aircraft to assure that no contamination of other cargo occurs and that any issues with the shipment be easily determined and corrected. Further, we have revised the requirement proposed in paragraph (j)(8) (codified in the final rule as paragraph (j)(7)) to give importers the option of either ensuring an adequate ventilation system is in place, with HEPA filtration for airflow circulating between NHPs and passengers traveling with a shipment of live NHPs, or providing NHP transport workers with respiratory PPE if there is not an adequate ventilation system. The Agency believes this change makes the provision less prescriptive while offering adequate protection against transmitting zoonotic diseases from NHPs to humans traveling on the same conveyance.

We have also revised proposed paragraph (j)(11) (paragraph (j)(10) of the final rule) to make clear that before beginning operations, or ''for each import,'' importers must establish and document the communicable disease-prevention SOPs to be carried out throughout the chain of custody. In final rule paragraph (j)(12), HHS/CDC has adopted the commenter suggestion to state expressly that importers must ensure SOPs for both the removal from transport vehicles and proper disposal of biohazardous waste following a shipment of live NHPs.

An individual said we should consider requiring at least two transport workers for over-the-road (OTR) NHP shipments, written contingency plans, and signage on the transport vehicle warning the public to call a designated number before entering a vehicle transporting live NHPs. The commenter suggested further that we require OTR shippers to register with HHS/CDC and undergo training specific to transport workers. Another commenter suggested having OTR transporters register with HHS/CDC. This same commenter also suggested GPS-equipped vehicles that meet ''certain minimum standards,'' and with operators possessing ''all applicable licenses/permits to operate as a commercial transporter.''

HHS/CDC Response. In response to the comment that we require two transport workers per OTR transport shipment of NHPs, and that these transport workers and vehicles be subject to certain additional requirements, we note that HHS/CDC has not traditionally regulated transport workers, but rather NHP importers. Accordingly, we believe that continuing to regulate NHP importers, rather than placing new requirements on transport workers is the best way to protect public health. However, we agree with the commenter that importers should plan for contingencies in OTR transport, and have revised § 71.53(i)(4)(i) to clarify that worker protection plans should address procedures for responding to emergencies during transport.

J. Public Comments Regarding Quarantine Facility Requirements

Commenters addressed the proposed provisions on quarantine requirements in § 71.53(l) for importers not otherwise exempted under this provision (*i.e.,* authorized zoo-to-zoo and lab-to-lab transfers).

Two commenters commented on the proposed air-handling system requirements in § 71.53(l)(2)(v) and (vi) that would mandate a separate system for each quarantine room, which would remain under negative pressure relative to the common hallway or anterooms. One commenter said the requirement needed further explanation, given that inhibiting air mixture between rooms could be accomplished with separate exhaust equipment for each room or a dedicated exhaust system that pools adjacent rooms. The commenter noted that exhaust systems are on emergency generator power and supply-side air to quarantine rooms is often provided with a common HVAC (heating, ventilation, and air conditioning) system. Regarding the airflow indicator, the other commenter asked whether it would suffice to confirm negative pressure in the wards and no air circulation out of the ward, if the importer mounted a pressure monitor in the wall indicating negative pressure in the ward compared to the exterior.

HHS/CDC Response. HHS/CDC agrees with the commenter's concerns above and has edited the text of the final rule to better explain the intent of the provision.

One commenter asked whether under proposed § 71.53(l)(3)(iii), HHS/CDC should permit veterinary discretion within a quarantine room to use nets or gloves to recapture a small NHP rather than anesthetizing or tranquilizing the animal ''before handling.'' The commenter said that the proposed text would preclude the use of these alternative capture methods—even where experienced personnel would be involved in the recapture—and the size, species, or clinical soundness of the animal would warrant a non-chemical restraint.

HHS/CDC Response. To address the comment that HHS/CDC should permit the use of methods other than anesthesia or tranquilizer before handling a live NHP, we have revised § 71.53(l)(3)(iii) to allow handling where an animal is ''otherwise restrained.'' Because anesthetizing or tranquilizing a live animal before handling is most protective of human health and safety, those are the preferred methods under the regulation. However, we recognize that using an alternative restraint method may be appropriate where the restraint is part of the facility's SOPs and is the last resort for obtaining quick capture and veterinary handling of a live NHP.

There were several observations and suggestions from commenters concerning the proposed necropsy and diagnostic testing requirements under § 71.53(l), with most commenters addressing TB testing and procedures. One commenter recommended replacing the proposed TB testing procedures. Another commenter said that current TB testing methods used in NHP screening are inadequate, and that the proposed changes to these methods ''do not go far enough'' to protect public and NHP health and welfare. And another commenter suggested we reconsider the decision to rely on TB skin testing using the mammalian old tuberculin (MOT) method. The commenter said that skin testing is ''a poorly performing test in many NHPs,'' that the current requirements for multiple testing at 2-week intervals is ''physiologically demanding'' on the animals, and that there is an inherent risk to animals and humans each time an NHP must be immobilized for such testing. The same commenter argued alternatively for ''currently available confirmatory tests, which can be utilized in conjunction with skin testing, minimizing repeat immobilization procedures.''

Another commenter said that there is a diagnostic TB test other than the intradermal TST and HHS/CDC's failure to recognize the alternative test has hampered sales. The commenter asserted that the alternative test permits use of the same blood sample drawn during a health examination and provides results in minutes rather than days. This commenter said that TST measured only cell-mediated immunity, which might be suppressed in a latent infection, and that combining TST with measures of humoral immune response would increase diagnostic power and could reduce the possibility of failing to detect latent infection during quarantine. This commenter further asserted that there was no proof of TST working in all NHP species, that there is no requirement to test new production batches of TST on primates, and that imposing the same testing requirements on all NHPs is an approach based on tradition, not scientific merit. Another commenter also objected to maintaining the TST, saying that given the poor reliability of TST results in NHPs, we should strengthen the proposed requirements to reflect the best available science and practices for test methods and regimens.

Yet another commenter recommended ''replacing the (proposed) tuberculin testing procedures.'' The commenter also said that rather than rely solely on ''poorly-performing screening tests in quarantine,'' HHS/CDC should require ''currently available confirmatory tests and then rigorous, ongoing bio-security and surveillance once in the managed zoo collection.'' Noting the proposed requirement for including in the SOPs a grading scale interpretation of TSTs for NHPs in quarantine, this commenter suggested removing this requirement from § 71.53(l)(3)(ix), and instead, grading reactive animals in import quarantine either as negative or positive. The commenter asserted that although quarantine facilities might use such a scale during import quarantine, many ''do not recognize 'questionable' responses,'' and prefer to err ''on the side of caution.'' Similarly, another commenter said it preferred to grade reactions for animals in import quarantine as positive or negative. The commenter asserted that that the TB test itself is imperfect, and that ''any range of abnormal display may be seen on an individual that is truly infected.''

HHS/CDC Response. HHS/CDC does not accept the assertions that there are currently TB tests more appropriate than the required MOT, but believes that a more improved test may be developed in the future. The currently approved test for the diagnosis of TB in NHPs is the TST performed using MOT, 0.1cc injected intradermally in the palpebrum and observed at 24, 48, and 72 hours (ILAR, 1980). Other TB tests have been evaluated but it has been noted that ''no single screening test will meet all the requirements for surveillance and diagnosis of TB in nonhuman primates. Instead, the use of several tests in combination can increase the overall sensitivity and specificity of screening and surveillance programs and likely represents the future of TB testing in nonhuman primates'' (Lerche, 2008). HHS/CDC will continue to require the TST until an improved testing procedure is developed. Until then, if test results are positive, the importer may elect a battery of tests to confirm the TST finding, and in consultation with HHS/CDC, may choose either to treat or euthanize the animals. Further, concerning grading scales for animals with ''questionable'' responses, HHS/CDC appreciates that many NHP importers consider any MOT reaction as positive. Again, our regulations are influenced by the ILAR guidelines (ILAR, 1980), which do allow subjecting NHPs to further testing in a ''suspect'' case of TB. HHS/CDC believes that it is permissible for an importer to interpret the TST according to the importer's approved standard operating procedure and to do further diagnostic testing for NHPs with a suspect TB reaction as defined by the SOP.

A commenter noted that paragraph (l)(3) should spell out steps for removing samples from the quarantine ward to perform laboratory analyses.

HHS/CDC Response. In response to the commenter's observation that there was no language in the proposed rule describing procedures for removing samples from the quarantine ward, HHS/CDC has added a requirement in § 71.53(l)(3)(iv) for importers to describe procedures for handling and transporting such samples.

Three commenters noted that proposed § 71.53(l)(3)(viii)(B) would require antibody testing for animals surviving quarantine and displaying signs suggestive of a filovirus infection, but that paragraph (l)(6)(viii) of the provision would require performing filovirus testing using the antigen-capture enzyme-linked immunosorbent assay (ELISA) method on the liver of any animal that dies or is euthanized for reasons other than trauma. The commenters suggested we modify § 71.53(l)(6)(viii) to require antigen-capture testing of liver tissue only from animals that died or were euthanized and exhibited potential signs of a filovirus infection.

HHS/CDC Response. In accordance with the intent of the provision, HHS/CDC has clarified the proposed language in § 71.53(l)(6)(viii) to specify that antigen-capture testing is required for NHPs that die or are euthanized for any other reason than trauma or adverse environmental conditions.

A commenter asked whether an exemption from a BSL3 type quarantine still would require adhering to proposed paragraphs § 71.53(i), (j) and (k). The commenter suggested worker protection, crating, and transport at a BSL1 or BSL2 for NHPs with well-documented medical histories prior to import. Also, this commenter and another asked HHS/CDC to clarify the apparent inconsistency between proposed § 71.53(l)(6)(ii), requiring performance of a necropsy under biosafety level (BSL)3 containment, and § 71.53(l)(6)(iv), requiring necropsy under BSL3 or BSL2 containment.

HHS/CDC Response. To address commenter requests for clarification regarding the appropriate biosafety level procedures for necropsy requirements under § 71.53(l)(6), we deleted the reference to BSL3 in paragraph (l)(6)(ii). We revised paragraph (l)(6)(iv) to require BSL3 or BSL2+ precautions for necropsies only. However, HHS/CDC acknowledges that all NHPs pose a potential risk to human health and should therefore be handled while wearing recommended PPE, as dictated in the approved SOPs. BSL2+ is a hybrid level of precautions that requires at least the use of a BSL2 facility with BSL3 containment equipment and practices. (HHS/CDC and NIH, 2007).

An individual commented that we should modify or delete proposed § 71.53(l)(3)(vii)(C) that would prohibit an importer from releasing an animal from quarantine if the importer knows or has reason to suspect the NHP has a zoonotic exposure or infection. The commenter said we should not consider zoonotic agents such as herpes B virus in the same category as TB, yellow fever, or filovirus.

HHS/CDC Response. HHS/CDC has also revised paragraph § 71.53(l)(3)(viii)(C) as the commenter requested to clarify that an importer must not request a release of an NHP from quarantine if the animal is ''visibly ill.''

Referencing proposed paragraphs § 71.53(i)(5), (j)(6), (j)(12) and (13), (k)(3), and (l)(2); a commenter said we should clarify acceptable procedures for disinfecting, autoclaving, or disposing of animal wastes, bedding, and uneaten food. The commenter also said we should clarify disinfection requirements for vehicles. This same commenter said that when dealing with imports of large species or large numbers of primates, the cost of disposing of bedding and medical wastes could be prohibitive for zoos, and autoclaving could be impractical or impossible.

HHS/CDC Response. Regarding the commenter's request that HHS/CDC clarify acceptable procedures for disinfecting animal wastes, bedding, and uneaten food, we note that all methods that meet the performance-based standard will be considered. One example for handling of animal waste, bedding, and uneaten food other than autoclaving or disposal by a biohazard company would be to put the waste into the sanitary sewer system. Also, trucks can be cleaned of gross debris to be properly disposed of and then sprayed or fogged with a tuberculocidal, virucidal, or bactericidal disinfectant for an adequate contact time and then cleaned.

K. Public Comments Regarding Requirements for Veterinarians and Veterinary Pathologists

The January 2011 NPRM specifically asked for feedback on what factors should be taken into consideration in the determination of whether a veterinarian is sufficiently ''experienced'' in the care of NHPs and what constitutes a ''qualified'' laboratory. A few commenters discussed the requirements for veterinarians and veterinary pathologists. One commenter said that in requiring quarantine facilities to have access to a qualified veterinarian, proposed § 71.53(i) and (l) should specify that such personnel be on duty and on site during business hours; and that there be appropriate veterinary coverage for evenings, weekends, and holidays. This commenter said further that the requirements should specify a number of available and qualified veterinarians commensurate with the number of NHPs.

HHS/CDC Response. While HHS/CDC may agree that these are good requirements for a facility, these do not help to define qualifications of a veterinarian. Thus, no changes were made to § 71.53(i) and (l) based upon these comments.

A commenter asserted that the rule should include as minimum requirements for veterinarians: A current veterinary license, USDA accreditation, and experience with NHPs. Another commenter also stated that HHS/CDC should define ''qualified veterinarian'' similar to USDA.

HHS/CDC response. HHS/CDC agrees that these would be the ideal minimal requirements for a licensed veterinarian working with NHPs. In response, we have added a definition for licensed veterinarian to the text of the regulation to clarify that these individuals must have experience working with NHPs.

A commenter asked why HHS/CDC would require a veterinary pathologist to have a state license, which would preclude other qualified professionals from conducting procedures such as necropsy. The commenter said that because veterinary pathologists do not ''practice,'' most do not obtain or maintain state licenses. The commenter also suggested that we require the performance of necropsies by a board-certified veterinary pathologist or a state-licensed veterinarian.

HHS/CDC response. HHS/CDC agrees that requiring a veterinary pathologist to perform necropsy is not always necessary and may be too limiting to an NHP import facility, but that just any state-licensed veterinarian may not be familiar with the public health risk associated with performing necropsies on imported NHPs. We have removed ''state-licensed veterinary pathologist'' from § 71.53(l)(6)(ii) and edited the language to reflect a requirement for the performance of necropsies by a veterinary pathologist or a state-licensed veterinarian with knowledge and experience with the disease risks associated with performing these necropsies. Additionally, the veterinary pathologist or licensed veterinarian must be familiar with the precautions and level of containment that should be used to perform these necropsies.

L. Public Comments Regarding Zoo-to-Zoo and Laboratory-to-Laboratory Transfers; Animal Acts

Some commenters addressed the proposed requirements for zoo-to-zoo and laboratory-to-laboratory transfers in § 71.53(l)(1), which would exempt these entities from the quarantine facility requirements in this provision provided that the transfer complied with proposed § 71.53(p)(2) and § 71.53(q)(2). After stating their strong support for paragraph (p)(2), one commenter recommended following proposed risk-reduction procedures irrespective of whether quarantine is required.

HHS/CDC Response. Regarding the recommendation for a defined disease risk assessment for NHPs imported by AZA-accredited zoos, HHS/CDC does not believe further risk reduction procedures are necessary, because a zoo must conform to AZA standards as a condition of being excepted from otherwise applicable quarantine requirements.

In response to the commenter's request that we clarify HHS/CDC criteria for determining that a zoo outside the United States is ''AZA equivalent,'' HHS/CDC will consider a facility as meeting this standard if it is accredited by an organization that has standards comparable to those in the AZA Accreditation Standards and Related Policies.[3] These standards include performance-based procedures addressing appropriate veterinary care, quarantine and necropsy, and public exposure to animals. This approach allows individual institutions to decide on the best procedures within their institutional capabilities to reach the desired results.

Another commenter requested that we clarify the § 71.53(p)(2) proposed exemption from the 31-day quarantine provision in § 71.53(l)(1) for zoo-to-zoo transfers. The commenter stated that importers involved in zoo-to-zoo transfers of NHPs still would have to comply with proposed §§ 71.53(i) (worker protection and PPE), 71.53(j) (SOPs for NHP crating, caging, and transport), and 71.53(k) (ground transport requirements). The same commenter asserted that as written, these subsections indicate that if an NHP with a known medical history were the subject of a zoo-to-zoo transfer, the animal still would be handled under BSL3 protocols until its arrival at a U.S. zoo, where it then would be exempt from any type of quarantine. The commenter said there appeared to be an inconsistency.

HHS/CDC Response. HHS/CDC clarifies the intent of the regulation by emphasizing that qualified zoos and labs under paragraphs (p) and (q) are not exempt from the worker protection, ground transportation, or SOP requirements under this regulation. Further, the only BSL2+ or BSL3 requirements in this regulation are for necropsies. However, HHS/CDC acknowledges that all NHPs pose a potential risk to human health and should therefore be handled while wearing recommended PPE, as dictated in the approved SOPs.

One commenter said it was unclear why there was inconsistency in the standards for documentation of negative TB tests for animal acts, zoo-to-zoo transfers, and laboratory-to-laboratory transfers. The commenter suggested that the standard for all three should be the higher one, which is the laboratory-to-laboratory transfer standard. Two commenters suggested that we have the same standard for medical records and certificates for zoo-to-zoo and laboratory-to-laboratory transfers from outside the United States.

HHS/CDC Response. Regarding the differing TB standards for zoo-to-zoo, laboratory-to-laboratory, and animal acts, HHS/CDC believes the commenter may have misinterpreted the proposed provisions. Neither the proposed language nor final rule language specifies a more stringent standard for one group. However, each group will be expected to present documentation of regular TB testing and good health.

One commenter recommended that NHPs imported through AZA-accredited zoos go through a defined risk assessment and decision analysis before importation and release from quarantine. This commenter also asked what criteria HHS/CDC would use to determine that a zoo outside the United States was an AZA-equivalent zoo.

HHS/CDC Response. Although we are easing some of the quarantine requirements for zoo-to-zoo and laboratory-to-laboratory transfers, these entities still will be regulated and required to follow risk-reduction procedures. Further, as explained in the regulatory analyses section for this rule, importers transferring NHPs between qualifying zoos and qualifying laboratories already are regulated by USDA, may be bound by the Public Health Service (PHS) policy for humane treatment of laboratory animals, and must meet guidelines for animal care and occupational health and safety from accrediting organizations. For zoos, that means providing a quarantine facility for animals new to the collection. Considering all these factors, we believe that our registration, records, and oversight requirements; the requirements of accrediting organizations; and oversight by other federal entities provides health and safety assurance equivalent to what the 31-day quarantine period provides for other importers.

One commenter opposed § 71.53(p)(2) and § 71.53(q)(2) provisions permitting NHP transfers between laboratories without subjecting the animals to ''certain testing and quarantine requirements.'' More specifically, the commenter said the proposed change would result in risks to public health and animal health and welfare, and would create the potential for abuse. Another commenter also opposed easing quarantine requirements for laboratory-to-laboratory transfers of NHPs. Citing published papers to support the proposition that neither new shipments nor established colonies of NHPs are immune from infectious diseases, the commenter said we should not eliminate quarantine requirements for any reason.

HHS/CDC Response. HHS/CDC disagrees with these commenters and emphasizes that such transfers will not be without oversight. For laboratory-to-laboratory transfers of NHPs, importers must have protocols approved by the IACUC, a self-regulating entity required under U.S. law for institutions using laboratory animals for research and instruction. Further, the importer must demonstrate that the animals are part of long-term, established studies with specific study protocols. Sending laboratories must submit records showing TB testing, number of NHPs, current health certificates, documentation of the research project, and travel itineraries.

One commenter said that because NHPs in zoos and in many professional animal acts live in uncontrolled environments where interaction with humans may be unlimited, imported NHPs in zoo populations and animal acts leaving and then returning to the United States should have no special import exemptions. This commenter suggested maintaining the 31-day quarantine requirements for both categories of NHPs. Two commenters both agreed we should maintain the quarantine period for zoo-to-zoo transfers.

HHS/CDC Response. HHS/CDC agrees with the comment that transfers of NHP from facilities outside the United States should be subject to the same medical records and health certificate requirements—irrespective of whether the transfer is between qualified zoos or laboratories. Although these groups will not be required to undergo the 31-day quarantine, these importers still are subject to registration with the Agency before bringing animals into the United States. The final rule will also hold importers of U.S.-based animal acts to the same requirements for entry as foreign-based animal acts; all such NHPs will be subject to a quarantine period regardless of where the animals are based.

[3] *http://www.aza.org/uploadedFiles/Accreditation/Accreditation%20Standards.pdf.*

M. Public Comments Regarding NHP Products

One commenter said we should better define ''the scope, requirements or duration'' of the permit process to help importers of NHP blood and tissue samples ensure that shipments of such products would not be degraded or destroyed and lose their scientific value. The commenter questioned the necessity for further permit requirements given that importers of these products already must obtain a CITES permit.

HHS/CDC Response. Under § 71.53(t), Nonhuman primate products, importers are required to obtain a permit from HHS/CDC prior to shipment of these products. However, this final rule does not change the current and longstanding practice of obtaining such a permit. HHS/CDC recognizes the need for timely shipment of such products and will expedite all requested permits to ensure that no products are degraded or destroyed.

Two commenters made remarks on proposed requirements for permits for importing NHP products, including blood and biological samples. One commenter asked us to indicate that a HHS/CDC permit covers NHP products not intended for commercial use.

HHS/CDC Response. In response, a HHS/CDC permit is required and will cover any NHP product (personal or commercial) unless it has been rendered noninfectious, as defined in the final text of the regulation.

A commenter asked us also to clarify that although a product importer may not need a HHS/CDC permit for some products, there may be other non-HHS/CDC permits required for import. Asserting that proposed § 71.53(t) would cover blood and tissue samples from NHPs, another commenter noted that importing these materials already requires holding a CITES permit, which HHS/CDC may use to track these importers and materials.

HHS/CDC Response. At present, HHS/CDC does not have the resources to track permits issued by other federal agencies. Furthermore, such outside permits are reviewed and issued for purposes other than to protect public health.

The commenter also noted that the requirement to render biological samples noninfectious could destroy their scientific value. This commenter further asked whether formalin-treated NHP tissues and slides containing such tissue would require a permit for importation. The same commenter said it was important to distinguish between formalin-fixed tissue and histological preparations of slides and blocks from formalin-fixed tissue. The commenter described slides and blocks as subject to disinfecting in the form of serial exposure to extractive solvents (*e.g.,* alcohol) and heat during tissue processing and block preparation. It said that penetration of thin slices of tissue used on slides permits excellent penetration of solvents, and that the preparation of paraffin-embedded blocks and slides provides a physical barrier that minimizes potential exposure. The commenter said that these materials are for scientific purposes, that knowledgeable people handle the materials in laboratories equipped for handling potentially infectious samples from humans or animals, and that the value of permits for such materials is questionable. The commenter said that should HHS/CDC require importers of blood and tissue samples to obtain a permit, that it must define and structure the process to avoid delays that may adversely affect the scientific quality of samples.

HHS/CDC Response. As noted earlier, although some importers of NHP products are subject to the CITES program, HHS/CDC's mandate is to protect public health, and any untreated NHP product poses a risk to human health. However, items which may be compromised by rendering them noninfectious may still enter the United States if accompanied by a HHS/CDC-issued permit. Under § 71.53(t)(1) of the final rule, we lay out the conditions for importing noninfectious products into the United States. In § 71.53(t)(2) of the final rule, we clarify that it may be permissible to import infectious blood and tissue samples for bona fide scientific, educational, and exhibition purposes under conditions set out in that provision. Timely requests for importing these products are processed expeditiously. As the final rule makes clear in § 71.53(t)(1), an NHP product importer may use formalin fixation or any method approved by HHS/CDC to render products noninfectious.

N. Public Comments Regarding Appeals

Regarding the appeals process in proposed § 71.53(u), four commenters asserted that the proposed time for appeal was too short, the process was undefined, and a rationale for so short a period was absent. Commenters suggested expanding appeals to 5 days.

HHS/CDC Response. HHS/CDC agrees that importers who are denied a permit should have more time to appeal the denial. Therefore, § 71.53(u)(2) extends the time for appeal from 2 to 5 days. Regarding the process itself, we believe that an appeal of a permit denial to the HHS/CDC Director is unambiguous and provides sufficient procedural safeguards against erroneous permit denials.

O. Public Comments Regarding HHS/CDC Monitoring and Enforcement

An individual commenter stated that our proposal said little about facility inspection, importer compliance, number of personnel, program funding, and enforcement actions. The commenter questioned how we would ensure consistent monitoring and enforcement. Another commenter referenced what it called ''obvious disincentives'' for reporting noncompliance by overseas suppliers and shippers, and the apparent lack of a mechanism for HHS/CDC to assess compliance before an NHP shipment arrives in the United States. Calling the proposed procedures in § 71.53(j) ''inadequate,'' and given what the commenter said was the failure of NHP breeding farms outside the United States to match our health and welfare standards, this commenter said we should ''directly monitor'' NHP overseas operations. This commenter suggested that the Agency take a direct, active role in risk management, by follow the approach the United Kingdom now employs. In the alternative, said the commenter, we could prohibit NHP imports altogether.

HHS/CDC Response. HHS/CDC does not have the authority to regulate foreign NHP facilities. However, enforcement of the regulations for U.S. facilities will remain as it is currently, and the same penalties apply for violations. For compliance and inspections, HHS/CDC will continue to make unannounced visits for U.S.-based importers, as these importers must make records, facilities, vehicles, and equipment available for HHS/CDC inspection during operating business days and hours, and at other necessary and reasonable times.

Another commenter asked whether inspection of NHP importers would include importers of blood and tissue samples, and asked what criteria we would use for such inspections.

HHS/CDC Response. Because of the extensive resources that would be required for such inspections, the Agency will not perform site visits but will rely on HHS/CDC quarantine station inspections of incoming shipments for compliance with these requirements.

Another commenter also suggested we add ''employee health and safety records'' and ''animal health records'' to the list of things an importer must make available for HHS/CDC inspection.

HHS/CDC Response. HHS/CDC agrees with this comment and has inserted the suggested language into paragraph (b)(1).

Regarding a change in the special permit-renewal period from every 180 days to every two years, one commenter said this change would ''vastly reduc[e] regulatory oversight of importers'' without evidence that the health risk posed by these importers has changed. This commenter further asserted that we provided no justification for changing the renewal period other than easing the $84/year burden on the regulated community, and that such a goal alone is insufficient ''to justify the serious threat to the public posed by relaxing standards for importation of these species of NHPs.''

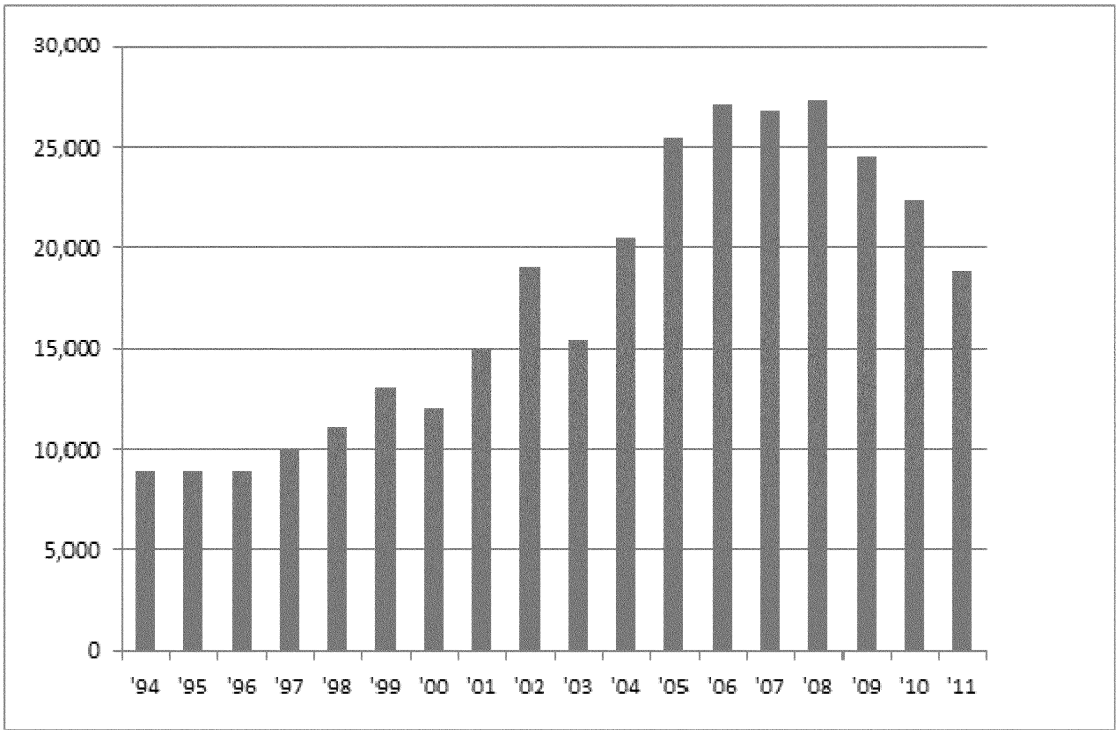
HHS/CDC Response. HHS/CDC believes that the commenter's concern about the reduction in government oversight is misplaced. We did not propose a reduction in oversight, but in administrative burden. Importers must continue to notify HHS/CDC of all shipments and the Agency will continue to perform regular site visits, including the review of importer standard operating procedures. Indeed, there is constant communication between HHS/CDC and importers. Extending the renewal period for special permit species will not result in less oversight, and is consistent with the directive in Executive Order 13653 section 1 that we apply the least burdensome tools for achieving regulatory ends. Further, although one objective of this rule is to reduce the compliance burden on special permit species importers; the principal goals of this rulemaking are to extend special permit species requirements to all NHP imports, to improve Agency oversight through a general requirement that NHP shipments enter the United States through ports of entry with a HHS/CDC quarantine facility, and to codify existing guidelines. We have extended the registration renewal period for special permit species importers not just to reduce the burden on the regulated community, as the commenter asserts, but because the reduction and continuing low morbidity and mortality rates for these species in transit and quarantine demonstrate that a 2-year renewal period would be sufficiently protective of public health.

Concerning the change in timeframe for renewal of importer licenses, HHS/CDC would like to emphasize that we have incorporated all provisions of the old 180-day permit requirement into the new regulation and have strengthened these requirements by requiring filovirus testing on all Old World Monkeys. All currently registered importers of the three special-permit species (cynomolgus and rhesus macaques, and African green monkeys) have been importing these animals since the special permit first went into effect in 1990. There have been no legal challenges to any of the provisions of the special permit. We received only positive feedback from the public during the comment period for the NPRM. Compliance with provisions of the 180-day special permit has been excellent. Any potential for misinterpretation of the provisions is identified during the at-least biannual review of the importer's standard operating procedures and annual site visits.

The NHP import industry has changed vastly during the 22 years since the 180-day special permit final rule was promulgated. Before the requirements of the special permit were introduced, there were hundreds of NHP importers and high levels of NHP mortality during import. Many of these operations were poorly equipped and quickly dropped out of the industry in response to the special permit regulation and other HHS/CDC-mandated provisions concerning tuberculosis. Currently there are only 24 NHP importers registered with CDC: 11 commercial importers; 7 zoos; 4 national primate research centers; 1 university; 1 private research facility. This number has decreased from 27 registered importers in 2004. There are now only 8 importers who routinely import NHP covered by the special permit.

The number of NHPs imported annually has decreased dramatically over the last several years, as shown in the Figure 1 below.

Figure 1.



Factors for this decrease include difficulties encountered in international transportation of NHPs (fewer airlines allow transport each year), as well as decreased demand.

When an importer requests renewal of the special permit, the importer submits an email, and CDC re-authorizes the special permit, provided there have been no changes in the importer's standard operating procedures and no uncorrected procedural violations. In the last 8 years of program oversight, there has never been an instance where a special permit has not been renewed promptly. Any deficiencies on the part of the importer are: Noted during quarantine station oversight when the shipment reaches the United States; self-reported during quarantine by the importer; picked up on biannual review of the importer's registration application; or identified during routine site visits. All special permit NHP importers are visited annually.

HHS/CDC's rulemaking is in keeping with Executive Order 13563, Improving Regulation and Regulatory Review, which states that regulations must ''identify and use the best, most innovative and least burdensome tools for achieving regulatory ends. [The regulations] must take into account benefits and costs, both quantitative and qualitative.'' Renewing the special permits every 180 days expends taxpayer resources (*i.e.,* staff time) to review and approve renewal applications, when there is no current evidence to suggest that such a frequency of scrutiny contributes appreciably to protecting public health. As stated above, regulations should impose the smallest reasonable burden on the regulated entities in order to accomplish the purpose of the regulations; we are acting in the spirit of that principle by reducing the burden on the NHP importers because there is no evidence that requiring them to renew their special permits every 180 days is necessary to accomplish the purpose of the regulations.

It is our opinion based on extensive experience that the 180-day special permit final rule was promulgated during a much different phase of the import industry. Changes in the industry since then lead us to believe firmly that it has no appreciable benefits public health benefits over a two-year timeframe.

An individual asked how we will monitor compliance and apply penalties for brokers given there were no apparent requirements for them to register with HHS/CDC under § 71.53(r).

HHS/CDC Response. Although there is no requirement for brokers to register with the Agency, under § 71.53(r), brokers must notify HHS/CDC of in transit shipments before the shipments arrive in the United States, which includes providing detailed information on the animals; the in transit itinerary; equipment used in transport, housing and decontamination procedures; and other performance-based procedures to reduce the risk of exposing the public to health hazards presented by NHPs. Further, the same penalties apply to brokers as to other entities subject to these regulations.

P. Miscellaneous Comments

Asserting that proposed reporting of NHP illnesses and deaths upon arrival and in quarantine would reveal ''only a fraction'' of morbidity and mortality for these animals, a commenter asked that we provide an analysis of such cases from the recent past before continuing with this rulemaking. The commenter said we should report on the precise nature of illnesses and deaths, and include laboratory and post-mortem results. According to one comment, such an analysis would ensure that the public appreciated and understood any risks and benefits of the changes we proposed.

HHS/CDC Response. HHS/CDC disagrees with this comment. All morbidity and mortality in a shipment of NHPs upon arrival and during the 31-day quarantine period is reported to (and recorded by) HHS/CDC. Illness reports and necropsy reports are reviewed before any NHPs are released from the required quarantine. Additionally, veterinary medical records are reviewed during the regular, unannounced site visits.

One commenter recommended that in the final rule preamble or the rule itself, we discuss whether the rule would apply retroactively to NHPs imported before issuance of the final rule. The agency expressed particular interest in rule provisions addressing an importer's ability to maintain, sell, resell, or otherwise distribute imported NHPs or the offspring of imported NHPs.

HHS/CDC Response. Regarding the question of retroactive applicability, HHS/CDC notes that the new rule does not apply to animals or the offspring of animals imported into the country before 1975. For decades, there have been prohibitions on importing NHPs except for scientific, exhibition, or educational purposes; or for using the offspring of imported NHPs for reasons other than scientific, exhibition, or educational purposes. The revised rule continues these prohibitions.

IV. Alternatives Considered

Executive Order 13563 recommends that the regulatory impact analysis consider all feasible alternatives to current practice and the rule as proposed. The main impact of the rule is to unify existing regulations and codify professional guidance regarding infection control and worker safety procedures to prevent transmitting pathogens from NHPs to humans. As explained in II. Summary of the Proposed Rule Requirements, HHS/CDC proposed a number of changes in the NPRM that would achieve its regulatory objectives through performance-based standards rather than promulgating prescriptive standards for importers. HHS/CDC endeavored to allow regulated entities flexibility in choosing how to meet the standards. We have provided flexibility regarding recordkeeping requirements, standard operating procedures, and worker protection requirements.

HHS/CDC reviewed the 31-day quarantine requirement and associated restrictions for transfers of NHPs into the United States between Association of Zoos and Aquariums (AZA)-accredited zoos and proposed to eliminate that requirement. Similarly, HHS/CDC proposed a quarantine exception for transfers of NHPs from laboratories accredited by the Association for Assessment and Accreditation of Laboratory Animal Care International (AAALAC) or its equivalent, if the laboratory has a foreign-based and a U.S.-based facility and the NHP is part of an ongoing research project.

V. Regulatory Analyses

A. Executive Orders 12866 and 13563

HHS/CDC has examined the impacts of the proposed rule under Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993) and Executive Order 13563, Improving Regulation and Regulatory Review, (76 FR 3821, January 21, 2011). Both Executive Orders direct agencies to evaluate any rule prior to promulgation to determine the regulatory impact in terms of costs and benefits to United States populations and businesses. Further, together, the two Executive Orders set the following bars: quantify costs and benefits where the new regulation creates a change in current practice; define qualitative costs and benefits; choose approaches that maximize benefits; support regulations that protect public health and safety; and minimize the impact of regulation. HHS/CDC has analyzed the rule as required by these Executive Orders and has determined that it is consistent with the principles set forth in the Executive Orders and the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) and that the rule will not create enough change in current practice to have a measurable, quantifiable impact.

This rule is not being treated as a significant regulatory action as defined by Executive Order 12866. As such, it has not been reviewed by the Office of Management and Budget. This regulatory action is not a major rule under the Congressional Review Act. In our screening analysis under the Regulatory Flexibility Act, HHS/CDC also concludes that the rule will not have a significant economic impact on a substantial number of small entities.

HHS/CDC has determined that the main impact of the rule will be to unify existing regulations and codify professional guidance regarding infection control and worker safety procedures to prevent transmitting pathogens from NHPs to humans. All stakeholders involved in the importation and maintenance of NHPs will now be subject to the same set of rules and guidelines. This rule combines a disparate set of professional recommendations and rules that were published or established in various formats between 1975 and 1993 (see C. What is the History of this Rulemaking?). This rule clarifies definitions of terms and requirements for developing plans and SOPs for quarantine, other operations, personnel training, and worker health programs prior to importation of NHPs; although the rule does not add new terms or requirements. The regulation also allows stakeholders to exercise their own good judgment in implementing the regulatory guidelines through performance-based standards, rather than dictating prescriptive compliance.

The rule impact will be unification of existing rules and codification professional guidance. The rule will create qualitative costs and benefits for all NHP importation stakeholders and the United State public as explained below.

Benefits. There are benefits to the rule that accrue to: (1) The public in the form of protecting public health; (2) business stakeholders in the form of investment protection and a reduction in time needed to be spent on regulatory compliance leading to a benefit of avoided costs; (3) the NHP workforce; and (4) the scientific community.

Public health benefits:

- Reduction in risk of transmission of a variety of zoonotic infections including filoviruses, TB, herpes B virus, and parasites.
- Entry through quarantine stations where qualified personnel examine the NHP to ascertain any potential exposure to the public through direct contact or contaminated cargo.
- Certifying the health of NHPs in animal acts will reduce the risk of spectators coming in contact with ill animals.

Business stakeholders benefits (reduction in time spent on regulatory compliance, or avoided costs, and investment protection):

- Investment protection—Certifying the health of NHP will reduce the potential transmission of disease between NHP and reduce the costs to the business of caring for other ill animals, or in the worst case, stop the loss of investment through death.
- Regulatory reduction (avoided cost)—The registration renewal time for all NHPs will now be 2 years. Previously, importers of cynomolgus, African green, and rhesus monkeys were required to renew their special permit registration every 180 days, or two times a year. According to HHS/CDC records, special-permit holders are about a third of all NHP importers (20 of a total of 60). This is a four-fold reduction in paperwork for registration renewal for about a third of all NHP importers.
- Regulatory reduction (avoided cost)—More specific definitions and uniform application of rules and standards will make it much easier for businesses to reliably forecast the time

they need to spend complying with regulation.

• Regulatory reduction (avoided cost)—The rule eradicates the 31-day quarantine period for animals being transferred between zoos and laboratories when the facilities have been approved by professional organizations (AZA for zoos and AAALAC for laboratories). CDC professionals indicate that there are between three and five such transfers a year. Professional opinion and discussion with zoos and laboratories indicates that this would result in avoided costs of about $500 to $1,800 per transfer, depending on the facility costs for quarantine.

Scientific benefits:

• Obstacles to the movement of highly endangered NHPs will be removed to protect the species.

• Controlled entry of NHPs for long-term research will be allowed when the research can only be performed in United States laboratories.

NHP workers benefits:

• The regulation now defines the types of personal protective gear that workers must wear in order to protect the worker from the potential transmission of infectious agents.

• Guidelines for regular TB testing have been established to ensure that workers are tested and diagnosed in a timely manner.

• Guidelines are now established for access to medical care in the event of zoonotic-human illness transmission to ensure that workers are tested and diagnosed in a timely manner.

Costs. The current regulation is primarily definitional and changes very little actual current practice. The only part of the new regulation that will create an additional cost will be the requirement that all NHPs being imported enter the country through a port of entry or airport with a quarantine station. At the current time the majority of, as much as 95% according to CDC subject matter experts, of NHPs enter the country at ports with quarantine stations because they arrive on airlines that frequent those ports of entry. The remaining NHPs that are transported into the United States come in by truck across smaller border crossings between Mexico and the United States or Canada and the United States. Professionals in CDC's Quarantine Branch estimate that this amounts to approximately one shipment per year, or less than 5% of all NHP imported to the United States. HHS/CDC also notes that arrangements can be made in advance for alternative ports of entry if the importers contact HHS/CDC. Thus, HHS/CDC believes there is very little additional cost impact to the importer.

Cost-Benefit comparison. Benefits and avoided costs as enumerated in the benefits section appear to outweigh the additional transportation cost of additional travel for one or two importers each year that will need to enter through points with quarantine station.

B. Paperwork Reduction Act Analysis

HHS/CDC has determined that this rule contains data collection and record keeping requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3420). HHS/CDC already has approval from OMB for the collection of registration information from importers and record keeping requirements under OMB Control No. 0920–0134: Foreign Quarantine Regulations (expiration date July 31, 2015).

In addition, HHS/CDC has approval from OMB under OMB Control No. 0920–0263: Requirements for a Special Permit to Import Cynomolgus, African Green, or Rhesus Monkeys into the United States (expiration date June 30, 2014) to collect data from importers who wish to apply for a special permit to import non-human primates.

C. Federalism Impact

Under Executive Order 13132, if the rule would limit or preempt State authorities, then a Federalism analysis is required. The agency must consult with State and local officials to determine whether the rule would have a substantial direct effect on State or local governments, as well as whether it would either preempt State law or impose a substantial direct cost of compliance.

In accordance with section 361(e) of the PHSA [42 U.S.C. 264(e)], nothing in this rule would supersede any provisions of State or local law except to the extent that such a provision conflicts with this rule. For example, the rule would not prevent a State from taking stronger measures to deal with infected or possibly infected NHPs or to cover additional species. Further, our rule will not supersede state requirements not in conflict with the federal rule's provisions. However, in accordance with section 361(e) of the PHSA, any state or local law that would permit any activity prohibited under this rule would conflict with this rule and, therefore, would be superseded. The rule would not have a substantial direct effect on State or local governments or impose a substantial direct cost of compliance on them.

D. Environmental Impact

In the absence of an applicable categorical exclusion, the Director, HHS/CDC, has determined that provisions amending 42 CFR 71.53 will not have a significant impact on the human environment.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act at 2 U.S.C. 1532 requires that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted for inflation) in any given year. This rule is not expected to result in any one-year expenditure that would exceed this amount, therefore HHS/CDC has not prepared a table of quantified costs and benefits.

F. Plain Language Act of 2010

Under Public Law 111–274 (October 13, 2010), executive Departments and Agencies are required to use plain language in documents that explain to the public how to comply with a requirement the Federal Government administers or enforces. HHS/CDC has attempted to use plain language in promulgating this rule consistent with the Federal Plain Writing Act guidelines.

VI. References

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List of Subjects in 42 CFR Part 71

Airports, Animals, Communicable diseases, Harbors, Imports, Pesticides and pests, Public health, Quarantine, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Centers for Disease Control and Prevention amends 42 CFR part 71 as follows:

PART 71—FOREIGN QUARANTINE

■ 1. The authority citation for 42 CFR part 71 continues to read as follows:

Authority: Sec. 311 of the Public Health Service (PHS) Act, as amended (42 U.S.C. 243), secs. 361–369, PHS Act, as amended (42 U.S.C. 264–272).

■ 2. Revise § 71.53 to read as follows:

§ 71.53 Requirements for importers of nonhuman primates.

(a) Purpose. The purpose of this section is to prevent the transmission of communicable disease from nonhuman primates (NHPs) imported into the United States, or their offspring, to humans. The regulations in this section are in addition to other regulations promulgated by the Secretary to prevent the introduction, transmission, and spread of communicable diseases under 42 CFR part 71, subpart A and 42 CFR part 70.

(b) Scope. This section applies to any person importing a live NHP into the United States, including existing importers, any person applying to become a registered importer, and any person importing NHP products.

(1) Importers must make their facilities, vehicles, equipment, and business records, including employee health records and animal health records, used in the importation of NHPs, available to HHS/CDC for inspection during operating business days and hours, and at other necessary and reasonable times, to enable HHS/CDC to ascertain compliance with the regulations in this section.

(2) Nothing in this section supersedes or preempts enforcement of emergency response requirements imposed by statutes or other regulations.

(c) *Acronyms, initialisms, and definitions.*

(1) For the purposes of this section:

AAALAC means the Association for Assessment and Accreditation of Laboratory Animal Care International.

AZA means the Association of Zoos and Aquariums.

CITES means the Convention on International Trade in Endangered Species.

ELISA means enzyme-linked immunosorbent assay, a type of laboratory test that measures antibodies or detects antigens for specific pathogens.

HHS/CDC means U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, or an authorized representative acting on its behalf.

IACUC means Institutional Animal Care and Use Committee.

MOT means mammalian old tuberculin, a biological product used as a diagnostic tool in the evaluation for mycobacterial (TB and related bacteria) infections.

NIOSH means the National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

PPE means personal protective equipment, such as gloves, respirators, and other devices used in preventing the spread of communicable diseases.

SOPs means standard operating procedures.

TB means tuberculosis.

TST means tuberculin skin test.

USDA means United States Department of Agriculture.

(2) For purposes of this section, the terms listed below shall have the following meanings:

Animal act means any use of NHPs, including offspring, for entertainment in which the NHPs are trained to perform some behavior or action and are part of a routinely scheduled show, performance, or exhibition, open to the general public.

Breeding colony means a facility where NHPs, including offspring, are maintained for reproductive purposes.

Broker means a person or organization within the United States that acts as an official agent of an exporter of NHPs from another country, or as an intermediary between such an exporter and an importer of NHPs.

Cohort means a group of NHPs imported together into the United States.

Director means the Director of the Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, or an authorized representative.

Educational purpose means the use of NHPs, including offspring, in the teaching of a defined educational program at the university level or equivalent.

Exhibition purposes means the use of NHPs, including offspring, as part of a public display open to the general public during routinely scheduled hours in a facility that meets or exceeds AZA accreditation standards.

Importer means any person importing, or attempting to import, a live NHP into the United States, including an applicant to become a registered importer. Within the meaning of this section, ''importer'' includes any person maintaining a facility or institution housing NHPs during quarantine. Within the meaning of this section, ''importer'' also includes the agent of any animal act, laboratory, or zoo that is subject to or carries out responsibilities in accordance with the regulations in this section.

In transit means NHPs located within the United States that are not intended for import, whether scheduled or not, as part of the movement of those NHPs between a foreign country of departure and foreign country of final destination.

Lab or laboratory means a facility in the United States accredited by AAALAC or licensed by USDA, conducting research using NHPs, having foreign based facilities, and intending to transfer or transferring one or more NHPs that were originally part of an institutionally approved, ongoing protocol, from its foreign-based facility into its United States facility for purposes related to that specific research project.

Licensed veterinarian means a person who has graduated from a veterinary school accredited by the American Veterinary Medical Association's Council on Education, or has a certificate issued by the American Veterinary Medical Association's Education Commission for Foreign Veterinary Graduates, or has received equivalent formal education as determined by the HHS/CDC; and has received training and/or experience in the care and management of nonhuman primates.

Medical consultant means an occupational health physician, physician's assistant, or registered nurse, who is knowledgeable about the risks to human health associated with NHPs.

Nonhuman primate or NHP means all nonhuman members of the Order Primates.

NHP product or Product means skulls, skins, bodies, blood, tissues, or other biological samples from a nonhuman primate, including trophies, mounts, rugs, or other display items.

Offspring means the direct offspring of any live NHPs imported into the United States and the descendants of any such offspring.

Old World Nonhuman Primate means all nonhuman primates endemic to Asia or Africa.

Pathogen means any organism or substance capable of causing a communicable disease.

Permitted purpose means the use of NHPs for scientific, educational, or exhibition purposes as defined in this section.

Person means any individual or partnership, firm, company, corporation, association, organization, including a not-for-profit organization, such as a sanctuary, or other legal entity.

Quarantine means the practice of isolating live NHPs for at least 31 days after arrival in a U.S. quarantine facility where the NHPs are observed for evidence of infection with communicable disease, and where measures are in place to prevent transmission of infection to humans or NHPs within the cohort.

Quarantine facility means a facility used by a registered importer of NHPs for the purpose of quarantining imported NHPs.

Quarantine room means a room in a registered import facility for housing imported NHPs during the quarantine period.

Scientific purposes means the use of NHPs including offspring for research following a defined protocol and other standards for research projects as normally conducted at the university level.

Zoo means:

(1) Within the United States, an AZA-accredited and professionally maintained park, garden, or other place in which animals are kept for public exhibition and viewing; or

(2) Outside of the United States, a professionally maintained park, garden, or other place in which animals are kept for public exhibition and viewing that meets or exceeds the accrediting standards of the AZA.

Zoonotic disease means any infectious agent or communicable disease that is capable of being transmitted from animals (both wild and domestic) to humans.

(d) General prohibition on importing nonhuman primates. (1) A person may not import live NHPs into the United States unless the person is registered with HHS/CDC as a NHP importer in accordance with this section.

(2) A person may only import live NHPs into the United States for:

(i) Permitted purposes, as defined under paragraph (c)(2) of this section; or

(ii) Use in breeding colonies, provided that all offspring will be used only as replacement breeding stock or for permitted purposes.

(3) A person may not accept, maintain, sell, resell, or otherwise distribute imported NHPs (including their offspring) for use as pets, as a hobby, or as an avocation with occasional display to the general public.

(e) Disposal of prohibited or excluded NHPs. (1) HHS/CDC may seize, examine, isolate, quarantine, export, treat, or destroy any NHP if:

(i) It is imported through a location other than an authorized port of entry;

(ii) It is imported for other than permitted purposes;

(iii) It is maintained, sold, resold, or distributed for other than permitted purpose;

(iv) It is imported by a person who is not a registered importer; or

(v) It is otherwise deemed to constitute a public health threat by the Director.

(2) For any NHP arriving in the United States through an unauthorized location, for other than the permitted purposes, or by a person who is not a registered importer, the person attempting to import that NHP, must, as approved by the Director and at the person's own expense, do one of the following:

(i) Export or arrange for destruction of the NHP, or

(ii) Donate the NHP for a scientific, educational, or exhibition purpose after quarantine at a HHS/CDC-registered facility.

(3) If the person attempting to import a NHP fails to dispose of the NHP by one of the options described in paragraph (e)(2) of this section, the Director will dispose of the NHP at the person's expense.

(4) Pending disposal of any prohibited or excluded NHPs, the NHP will be detained at the person's expense at a location approved by the Director.

(f) Authorized ports of entry for live NHPs. (1) An importer may import live NHPs into the United States only through a port of entry where a HHS/CDC quarantine station is located. The list of current HHS/CDC quarantine stations can be found at *http://www.HHS/CDC.gov/quarantine/QuarantineStations.html.*

(2) In the event that the importer is unable to provide for entry at a port where a HHS/CDC quarantine station is located, the importer may only import live NHPs into the United States through another port of entry if the Director provides advance written approval.

(3) If prior written approval is not obtained from the Director, the importer and excluded NHPs will be subject to the provisions of paragraph (e) of this section.

(g) Registration or renewal of importers. Before importing any live NHP into the United States, including those that are part of an animal act or those involved in zoo-to-zoo or laboratory-to-laboratory transfers, an importer must register with and receive written approval from the Director.

(1) To register, or to renew a registration certificate, as an importer, a person must submit the following documents to HHS/CDC:

(i) A completed registration/application form;

(ii) A completed statement of intent that describes the number and types of NHPs intended for import during the registration period, the intended permitted purposes for which the NHPs will be imported;

(iii) Written SOPs that include all elements required in paragraphs (h) through (n) of this section;

(iv) A copy of all federal, state, or local registrations, licenses, and/or permits; and

(v) A signed, self-certification stating that the importer is in compliance with the regulations contained in this section and agrees to continue to comply with the regulations in this section.

(2) Upon receiving the documentation required by this section, the Director will review the application and either grant or deny the application for registration as an importer. Applications that are denied may be appealed under paragraph (u) of this section.

(i) Before issuing a registration, the Director may inspect any business record, facility, vehicle, or equipment to be used in importing NHPs.

(ii) Unless revoked in accordance with paragraph (t) of this section, a registration certificate issued under this section is effective for two years beginning from the date HHS/CDC issues the registration certificate.

(iii) An importer must apply to HHS/CDC for renewal of the registration certificate not less than 30 days and not more than 60 days before the existing registration expires.

(3) All importers must comply with the requirements of paragraphs (h) through (n) of this section.

(h) Documentation. An importer must develop, and document compliance with, a written policy that states imported NHPs, including their offspring, will only be used and distributed for permitted purposes.

(1) An importer must collect or create a record of the intended purpose of importation for each imported NHP and the purpose must comply with one of the permitted purposes. An importer must retain written certifications demonstrating that the NHPs and their offspring will continue to be used for permitted purposes for three years after the distribution or transfer of the NHP.

(2) An importer must retain records regarding each distribution of imported NHPs. Each record must include the identity of any recipients, the number and identity of each NHP in each shipment or sale, and the dates of each shipment or sale, for three years after the distribution or transfer of the NHP.

(3) An importer must maintain these records in an organized manner, either electronically or in a central location that is at or in close proximity to the NHP facility to allow HHS/CDC to easily inspect the records during HHS/CDC site visits during regular business hours or within one hour of such visits. If records are maintained electronically, they must be time-dated in a manner than cannot be altered, and redundant back-up copies must be made in a manner that protects against loss.

(4) Before distributing or transferring an imported NHP, an importer must:

(i) Communicate to the recipients of NHPs, in writing, the restrictions and definitions of permitted purposes; and

(ii) Obtain written certifications from the intended recipient that the NHPs will be used and distributed only for permitted purposes.

(i) Worker protection plan and personal protective Equipment. (1) In addition to complying with the requirements of this section, an importer must comply with all relevant federal and state requirements relating to occupational health and safety.

(2) Importers must have a written worker protection plan for anyone whose duties may result in exposure to NHPs, including procedures for appropriate response measures in the event of an emergency. An importer must adhere to the plan and SOPs and must ensure that each worker covered under the plan also adheres to it and all pertinent SOPs.

(3) An importer must contact HHS/CDC immediately by telephone, text, or email, as specified in the importer's SOP, to report any instance of a worker exposed to a zoonotic illness and must include instructions for contacting HHS/CDC in its worker protection plan.

(4) A worker protection plan must include the following:

(i) Procedures to protect and train transport workers in how to avoid and respond to zoonotic disease exposures associated with NHPs, including procedures for appropriate responses in the event of a vehicle crash or other emergency during transport;

(ii) Hazard evaluation and worker communication procedures that adhere to those in paragraph (i)(5) of this section;

(iii) PPE requirements that adhere to those in paragraph (i)(6) of this section;

(iv) TB-control requirements that adhere to those in paragraph (i)(7) of this section;

(v) If applicable, SOPs that adhere to requirements relating to macaques as described in paragraph (i)(8) of this section;

(vi) An infection-prevention program, including infection-prevention methods requiring, at a minimum, PPE and workplace practices for preventing infection among workers whose duties may result in exposure to NHPs and:

(A) SOPs that include requirements for preventing workplace infection from potentially contaminated needles or other sharp instruments and that, at a minimum, prohibit workers from recapping used needles by hand; removing needles by hand; or otherwise bending, breaking, or manipulating used needles by hand.

(B) SOPs requiring that used disposable syringes and needles, scalpel blades, and other sharp items be placed in puncture-resistant containers kept as close to the work site as practical and disinfected and/or disposed of as hazardous waste.

(C) SOPs requiring that removable, disposable PPE be autoclaved, incinerated, or otherwise disposed of as biohazardous waste. Nondisposable clothing worn in the quarantine facility must be disinfected on site before laundering.

(D) An infection-prevention program that requires NHP handlers to cleanse all bites, scratches, and/or mucosal surfaces or abraded skin exposed to blood or body fluids immediately and thoroughly.

(E) Infection-prevention procedures that require workers to immediately flush their eyes with water for at least 15 minutes following an exposure of blood or body fluids to the eye.

(vii) Post-exposure procedures that provide potentially exposed workers with direct and rapid access to a medical consultant including:

(A) Procedures ensuring that exposed workers have direct and immediate access to a medical consultant who has been previously identified in the SOPs to HHS/CDC.

(B) For potential exposures to herpes B virus, post-exposure procedures that require the routing of diagnostic specimens to the National B Virus Resource Center located at Georgia State University in Atlanta, Georgia, or another location as specified by HHS/CDC.

(viii) Procedures for documenting the frequency of worker training, including for those working in the quarantine facility.

(5) As part of the worker protection plan described in this paragraph (i), an importer must establish, implement, and maintain hazard evaluation and worker communication procedures that include the following:

(i) A description of the known zoonotic disease and injury hazards associated with handling NHPs;

(ii) The need for PPE when handling NHPs and training in proper use of PPE, including re-training and reinforcement of appropriate use;

(iii) Procedures for monitoring workers for signs of zoonotic illness, including procedures that ensure reporting to HHS/CDC by telephone, text, or email within 24 hours of the occurrence of illness in any worker suspected of having a zoonotic disease; and

(iv) Procedures for disinfection of garments, supplies, equipment, and waste.

(6) As part of the worker protection plan described in this paragraph (i), an importer must identify the PPE required for each task or working area. Additionally, in this part of the worker protection plan, an importer must ensure the following:

(i) Any required PPE must be available to workers when needed;

(ii) Workers in direct contact with NHPs must wear the following:

(A) Gloves of sufficient thickness to reduce the risk of cuts, scratches, and punctures;

(B) At a minimum, disposable NIOSH-approved N95 respirators, in compliance with OSHA 29 CFR § 1910.134, which requires a respiratory protection program;

(C) Face shields or eye protection; and

(D) Outer protective clothing when opening crates, removing foreign materials from crates, feeding NHPs, removing dead NHPs, or handling bedding materials.

(iii) Workers handling crates or pallets containing NHPs must wear the following:

(A) Elbow-length, reinforced leather gloves or equivalent gloves that prevent penetration of splinters, other crating materials, or debris;

(B) Outer protective clothing;

(C) Waterproof shoes or boots;

(D) NIOSH-approved respiratory protection that is compliant with OSHA regulations at 29 CFR 1910.134, and;

(E) Face shields or eye protection.

(iv) Workers whose faces may come within 5 feet of an NHP must wear disposable NIOSH-approved N95 respirators and either face shields or eye protection to protect against aerosol or droplet transmission of pathogens;

(v) Workers must remove disposable PPE and discard as a biohazard; and

(vi) Workers must not drink, eat, or smoke while physically handling NHPs or cages, crates, or other materials from such NHPs.

(7) For TB protection, an importer must ensure the following:

(i) Workers in a facility housing NHPs must have a baseline evaluation for TB prior to working with NHPs and an evaluation at least annually;

(ii) Prompt and direct access to a medical consultant who is capable of performing the evaluation and maintaining records for such tests;

(iii) If an NHP is found to have laboratory-confirmed TB, any worker who had previously entered any room where a confirmed NHP has been housed must promptly undergo a post-exposure TB evaluation and

(A) If that test is negative, the worker must undergo another TB evaluation 3 months later; and

(B) If either test is reactive, the worker must be referred for medical evaluation; and

(C) The HHS/CDC must be immediately notified of the results of the medical evaluation by telephone, text, or email as specified in the importer's SOPs.

(iv) Compliance with exposure-control planning elements under 29 CFR 1910.1030 for workers who will have parenteral and other contact with blood or other potentially infectious material from NHPs and compliance with the respiratory protection requirements in 29 CFR 1910.134.

(8) For importation of macaques, an importer must develop, implement and adhere to a written PPE program to prevent herpes B virus transmission. The program must be based on a thorough hazard assessment of all work procedures, potential routes of exposure (*e.g.,* bites, scratches, or mucosal exposures), and potential adverse health outcomes.

(9) An importer must keep records of all serious febrile illnesses (fever greater than 101.3 degrees Fahrenheit [38.5 degrees Celsius] for more than 48 hours) in workers having exposure to NHPs in transit or in quarantine. The record must be kept by the importer as part of the worker's administrative records. The importer must promptly notify HHS/CDC by telephone, text, or email if such an illness occurs. An importer must ensure that the medical consultant providing care is informed that the patient works with and/or has been exposed to NHPs.

(j) SOP requirements and equipment standards for crating, caging, and transporting live nonhuman primates. Equipment standards for crating, caging, and transporting live NHPs must be in accordance with USDA Animal Welfare regulation standards (9 CFR parts 1, 2, and 3) and International Air Transport Association standards, and an importer must establish, implement, maintain, and adhere to SOPs that ensure the following requirements are met:

(1) Any crate used to transport NHPs must be free of sharp projections that could scratch or otherwise injure workers or NHPs.

(2) Glass items must not be used for feeding or watering NHPs during transport.

(3) NHPs must only be removed from crates in an approved quarantine facility under the supervision of a licensed veterinarian.

(4) NHPs must not be removed from crates during transport.

(5) Upon arrival into the United States, only an importer or an authorized representative may receive the NHPs from a conveyance (*e.g.,* airplane, ship). The importer must establish an emergency contingency plan in the unlikely event they are unable to meet the shipment.

(6) All reusable items must be decontaminated between uses.

(7) At all times during transport, crates containing NHPs must be separated by a physical barrier from workers, other individuals, and all other animals and cargo, or by a spatial barrier greater than 5 feet, that prevents contamination of cargo or individuals with bodily fluids, feces, or soiled bedding.

(8) At all times during transport, individuals traveling with the shipment must be protected from shared air of NHPs to prevent the transmission of zoonotic diseases. Airflow must be unidirectional from NHP transport workers to NHPs or, if any air is recirculated to the NHP transport workers, it must be HEPA-filtered. If a ventilation system is not in place, all NHP transport workers must wear respiratory protection.

(9) If traveling by plane, crates containing NHPs should be loaded in the cargo hold last and removed first, must be placed on plastic that prevents spillage onto the deck of the plane, and must be placed on pallets or double crated to ensure separation from other cargo.

(10) Workers, as well as NHPs, must be protected from communicable disease exposures at any facility used en route, including transportation holding facilities. An importer must maintain a description of any transportation holding facilities and document the communicable disease prevention measures taken to protect workers at facilities used en route.

(11) For each import, documentation must be made of the communicable disease-prevention procedures to be carried out in every step of the chain of custody, from the time of embarkation of the NHPs at the country of origin until arrival at the quarantine facility.

(12) Procedures to ensure that aircraft, ship, vehicles, and related equipment are decontaminated following transport.

(13) Used PPE, bedding, and other potentially contaminated material must be removed from the ground transport vehicle upon arrival at the quarantine facility and disposed of as biohazardous waste.

(k) Ground transport vehicles. An importer must establish, implement, maintain, and adhere to SOPs for ground transport vehicles transporting NHPs that meet the following requirements.

(1) Ground transport vehicles must have a separate cargo compartment with separate heating, ventilation, and air-conditioning systems.

(2) The interior surfaces of ground transport vehicle cargo compartments must be of smooth construction, easy to clean and disinfect.

(3) Used PPE, bedding, and other potentially contaminated material must be removed from the ground transport vehicle upon arrival at the quarantine facility and disposed of as biohazardous waste by a licensed facility.

(4) Ground transport vehicle cargo compartments must be large enough to allow safe stowage of NHP crates in a manner that allows ready access to each NHP during transit without unloading any crates.

(5) After transport of the NHP shipment from the port of entry to the quarantine facility, the importer must notify HHS/CDC in writing, text message, or email as specified within the SOP, within 48 hours of the time the shipment arrived at the quarantine facility.

(6) As part of the notification of arrival in paragraph (k)(5) of this section, an importer must inform HHS/CDC whether suspected or confirmed transmission or spread of communicable disease occurred during transport, including notification of NHPs that died, became ill, or were injured during transport, or malfunctions associated with disease-mitigation procedures or equipment.

(l) Quarantine facilities. (1) The requirements of this paragraph (l) relating to quarantine facilities do not apply to laboratory-to-laboratory transfers or zoo-to-zoo transfers that are in compliance with paragraphs (p)(2) and (q)(2) of this section, respectively.

(2) An importer must maintain a quarantine facility for holding a cohort during the required quarantine period. NHPs must be quarantined for 31 days after arrival at the importer's quarantine facility. HHS/CDC may extend the quarantine period if an importer or HHS/CDC finds or suspects that an NHP is infected with, or has been exposed to, a zoonotic disease, or if an importer or HHS/CDC finds a need for additional diagnostic testing.

(i) For any quarantine facility established or maintained under this section, an importer must establish, implement, maintain, and adhere to SOPs that meet the following physical security requirements:

(A) The facility must be locked and secure, with access limited to authorized, trained, and knowledgeable personnel.

(B) An importer must limit access to NHP quarantine areas to authorized personnel who are responsible for the transport, study, care, or treatment of the NHPs.

(ii) An importer must keep the number of workers involved in the care, transport, and inspection of NHPs to the minimum necessary to perform these functions.

(iii) The facility must be designed and operated in such a manner as to allow for adequate disinfecting.

(iv) The facility must have adequate equipment and space for discarding and disinfecting all equipment, clothing, and caging.

(v) Each heating ventilation and air-conditioning unit in the quarantine facility must be designed so that there is no mixing of air among quarantine rooms and each quarantine room must remain under negative air pressure in relationship to the common hallway or anteroom(s) adjacent to the quarantine room.

(vi) Each quarantine room must have air flow indicators (pressure gauges or visual flow indicators) that are affixed outside the quarantine room that indicate the direction of airflow into or out of quarantine rooms and adjoining common hallways and anterooms.

(3) An importer must establish, implement, maintain, and adhere to SOPs for handling, monitoring, and testing NHPs in quarantine that meet the following requirements:

(i) An importer must ensure that all NHPs are identified individually with a unique number or alphanumeric code permanently applied to the NHP by tattoo, microchip, or other permanent identifier before importation or after the 31-day quarantine. Tattoos, microchips, or other permanent identifiers must not be applied during the quarantine period.

(ii) Health certificates, shipping documents, and NHP health records must include the number or code required in paragraph (l)(3)(i) of this section, as well as the age, sex, and species of the NHP.

(iii) An importer must ensure NHPs are confined in a squeeze-back cage whenever possible and that any individual NHP is anesthetized, tranquilized, or otherwise restrained before handling.

(iv) A description of handling and transporting samples. For any procedure involving the use of a syringe, a separate, disposable needle and syringe must be used, including a sterile needle and syringe for withdrawing medication from any multi-dose vials (*e.g.,* ketamine).

(v) Before any contaminated item is removed from a quarantine facility, an importer must ensure that all NHP waste, bedding, uneaten food, or other possibly contaminated items are disinfected, autoclaved, or double-bagged for disposal as biomedical waste by a licensed facility.

(vi) All cages, feeding bottles, reusable items, and other contaminated items must be disinfected between uses and before disposal.

(vii) Any equipment used for infusion of NHPs must be autoclaved or incinerated, as appropriate.

(viii) During the quarantine period, an importer must monitor NHPs for signs of any zoonotic illness, including signs consistent with yellow fever, monkeypox, or filovirus disease.

(A) If any NHP appears ill during quarantine, an importer must monitor that NHP for signs of zoonotic illness, including filovirus disease, and ensure appropriate treatment.

(B) If an Old World NHP displays signs suggestive of filovirus infection (*e.g.,* diarrhea with melena or frank blood, bleeding from external orifices or petechiae, or suffusive hemorrhage), and survives, an importer must collect serum samples on day 31 of quarantine and test these samples for antibodies to filovirus while the entire cohort remains in quarantine. An importer must test the serum for immunoglobulin G (IgG) antibodies to filovirus by using an ELISA methodology, or other method approved by HHS/CDC.

(C) An importer must not knowingly request a release from HHS/CDC of any ill NHP from quarantine under paragraph (l)(4) of this section.

(ix) For each NHP in a quarantine facility, an importer must administer at least three TSTs on the eyelid using old mammalian tuberculin (MOT), with at least 2 weeks between tests, before the NHP is released from import quarantine. TSTs must be read and recorded at 24, 48, and 72 hours, and a grading scale for interpretation of these tests must be listed in an SOP for TB testing.

(A) An importer must ensure that any cohort with positive or suspicious TST reaction remains in quarantine and receives at least five additional TSTs (each administered at least two weeks apart) following removal of the last affected NHP.

(B) The validity of TB test results may be compromised if during quarantine an NHP contracts a viral illness, including measles; is treated with steroids; or is immunized. An importer must document such occurrence(s) and hold the NHPs until they have recovered from the illness or are no longer on treatment, and for a recommended time after recovery (to be determined in consultation with HHS/CDC, depending on the illness or treatment in question) before TB tests are performed.

(C) An importer must retain records of all TSTs performed during the lifetime of each NHP at the facility housing the NHP until the NHP is transferred to another facility. These records must accompany the NHP during moves to other facilities.

(x) An importer must ensure that different cohorts of NHPs are quarantined in separate quarantine rooms.

(A) If mixing of cohorts should occur, an importer must treat the mixed cohort as a single cohort.

(B) All NHPs within that mixed cohort must remain in quarantine until each NHP in that mixed cohort has completed the minimum 31-day quarantine period.

(C) Quarantined NHPs must be housed in such a manner that they do not expose non-quarantined NHPs to non-filtered air and other potentially infectious materials, including soiled bedding, caging, and other potentially contaminated items.

(4) Before releasing a NHP from quarantine, an importer must obtain written permission from HHS/CDC. HHS/CDC may permit the release of a cohort from quarantine when all the following conditions have been met:

(i) The 31-day quarantine period, including any required extension of quarantine, has been completed.

(ii) HHS/CDC has confirmed receipt of written notification of the health status of the NHPs in the shipment from the quarantine facility's licensed veterinarian as required by paragraph (m)(4) of this section.

(iii) HHS/CDC confirms that the importer has addressed and resolved to HHS/CDC's satisfaction any NHP or worker communicable disease issues that were reported to HHS/CDC during shipment.

(5) If HHS/CDC notifies an importer of any evidence that NHPs have been exposed to a zoonotic disease, the importer must, at the importer's expense, implement or cooperate in the HHS/CDC's implementation of additional measures to rule out the spread of suspected zoonotic disease before releasing a shipment from quarantine, including examination, additional diagnostic procedures, treatment, detention, isolation, seizure, or destruction of exposed animals.

(6) An importer must establish, implement, and adhere to SOPs for safe handling and necropsy of any NHP that dies in quarantine. The SOPs must ensure the following:

(i) The carcass of the NHP must be placed in a waterproof double-bag and properly stored for necropsy, specimen collection, autoclaving and/or incineration, and disposal;

(ii) A necropsy must be performed by a veterinary pathologist or state-licensed veterinarian. Each necropsy report must address all major organ systems and incorporate clinical history and laboratory findings;

(iii) Necropsy and appropriate laboratory testing of the NHP must document the cause of death and/or rule out zoonotic illness;

(iv) Necropsy must be performed under biosafety level 3 (BSL3) or enhanced biosafety level 2 ''plus'' (BSL2+) to protect against exposure to highly infectious agents;

(v) Any samples of tissues, blood, serum, and/or transudates (bodily fluid) collected during necropsy must be retained until the NHP shipment has been released from quarantine by HHS/CDC, in case other testing is required by HHS/CDC;

(vi) Fresh and formalin-fixed tissue specimens, including tracheobronchial lymph node, liver, lung, and spleen, regardless of necropsy findings, must be collected for laboratory examination;

(vii) Any granulomatous lesions found in any NHP at necropsy, regardless of whether TB in the NHP was previously suspected, must be submitted to a laboratory for laboratory examination for acid-fast bacilli and for mycobacterial culture; and

(viii) In the event that an Old World NHP dies or is euthanized for any reason other than trauma or unexpected adverse environmental conditions during quarantine, liver tissue for filovirus antigen by using the antigen-capture ELISA method must be submitted to a qualified laboratory for testing. The laboratory should provide documentation of test validation and records of ongoing quality assurance.

(m) Health reporting requirements for nonhuman primates. (1) An importer must notify HHS/CDC of the events listed in this paragraph (m) by telephone, text, or email.

(2) An importer must notify HHS/CDC within 24 hours of the occurrence of any morbidity or mortality of NHPs in quarantine facilities, or following a zoo-to-zoo or laboratory-to-laboratory transfer.

(3) For any morbidity or mortality from time of embarkation from country of origin to release from HHS/CDC quarantine, an importer must report the circumstances to HHS/CDC promptly, including the cause of death for each NHP.

(4) Upon completion of the quarantine period and before an importer releases any NHP, cohort, or mixed cohort from quarantine, the importer must ensure that the quarantine facility's licensed veterinarian notifies HHS/CDC in writing of the health status of the shipment.

(5) An importer must notify HHS/CDC within 24 hours if any NHP tests positive for filovirus virus antigen or antibody.

(6) An importer must report to HHS/CDC within 24 hours, any positive or suspicious TST results, necropsy findings, or laboratory results. Any report required under this section must include a copy or summary of the individual NHP's health records.

(n) Recordkeeping and reporting requirements for importing NHPs. (1) Before authorizing the import of any NHPs, an importer must be in compliance with all applicable elements of the importer's SOPs.

(2) At least seven days before importing a shipment of NHPs, an importer must notify HHS/CDC in writing or by email of the impending shipment and provide the following information:

(i) The importer's name and address;

(ii) Number and species of NHPs being imported;

(iii) Description of crates;

(iv) Means of individually identifying NHPs;

(v) Origin of NHPs, including the country, the exporter, and the exporter's address;

(vi) Use of NHPs under paragraph (h) of this section;

(vii) Specific itinerary with names, dates, flights, times, airports, sea ports, and responsible parties to contact at every step of travel, including all ground transportation;

(viii) Port of entry;

(ix) If arriving by flight, the name of the airline and its flight number;

(x) If arriving by vehicle, the name of the vehicle's owner and its license plate number;

(xi) If arriving by ship, the name of the ship and its vessel number;

(xii) Name and address of the destination quarantine facility;

(xiii) Name, address, and contact information for shipper, if other than the importer;

(xiv) If applicable, name, address, and contact information for broker in the United States;

(xv) Name, address, and contact information for the person(s) responsible for off-loading NHPs in the United States;

(xvi) Name, address, and contact information for any party responsible for ground transportation from port of entry to quarantine facility;

(xvii) Expected quarantine facility, if different from the importer;

(xviii) Master air waybill number for shipment;

(xix) CITES permit number and expiration date.

(o) Animal acts. (1) All animal acts must be registered with HHS/CDC under paragraph (g) of this section. In addition to the requirements in paragraph (g) of this section, which incorporates the requirements in paragraphs (h) through (m), an importer must provide:

(i) A description of the animal act that includes each NHP.

(ii) Brochures, advertising materials, and/or documentation of recent or planned animal act performances.

(iii) A current list of all NHPs in the animal act, indicating each NHP's name, species, sex, age, distinguishing physical description, and unique identifier such as a tattoo, microchip, or other permanent identifier.

(iv) Prior to entry or re-entry into the United States, specific itinerary with names, dates, flights, times, airports, sea ports, and responsible parties to contact at every step of travel, including all ground transportation.

(v) A description, diagram, and photographs of the facilities where the importer houses the NHPs in the animal act in the United States, including illustrations of the primate caging and/or enclosures; the relationship of these cages or enclosures to other structures on the property and adjoining properties; whether the primate facilities are open to the air or fully enclosed; and the physical security measures of the facility.

(vi) Documentation signed by a licensed veterinarian describing the physical exam performed on each NHP in the animal act. Such examinations must be performed at least once a year. The physical exam must include the following:

(A) Routine complete blood counts, clinical chemistries, fecal exams, and any additional testing indicated by the physical exam.

(B) At least once a year, TB testing with MOT and interpreted as stated in paragraph (l)(3)(ix) of this section;

(C) NHPs with positive TST results must be evaluated for potential antituberculosis chemotherapy in consultation with HHS/CDC.

(D) If the NHP is a chimpanzee, serology and antigen testing for hepatitis B, serology for hepatitis C, and any additional titers must be performed as indicated by clinical history or exam. A chimpanzee found serologically positive for hepatitis B and/or hepatitis C is ineligible for entry or re-entry into the United States, unless confirmatory evidence signed by a licensed veterinarian shows that there is no hepatitis B or hepatitis C virus present in the NHP.

(vii) SOPs for transporting the NHPs internationally, including the shipping crates or enclosures, the type of conveyance, and measures to minimize human exposure to the NHPs.

(viii) A copy of a negative TST conducted within the past 12 months, or medical documentation that the individual is free of clinically active TB, for each trainer and/or handler.

(ix) A copy of each SOP for responding to suspected zoonotic diseases.

(x) If macaques are in the animal act, an SOP for responding to potential herpes B-virus exposures.

(p) Zoo-to-zoo transfers. (1) Persons who will only be importing live NHPs into the United States through transfer from one zoo to another must comply with all the elements listed in paragraphs (g), (h), (n), (i)(1) through (5), (i)(6)(i), (i)(6)(v), (i)(6)(vi), (i)(7) through (9); (j)(1), (j)(2), (j)(5), (j)(10) through (12); (k)(5) and (k)(6); and (m)(1), (m)(2), (m)(5), and (m)(6) of this section.

(2) If a zoo is importing one or more NHPs into the United States from another zoo, the recipient zoo must, before the transfer, submit the following information for approval by HHS/CDC:

(i) A copy of each NHP's veterinary medical records, including regular testing for TB from the previous zoo for HHS/CDC's approval. The medical record should include a positive identification of the NHP, such as a tattoo, microchip, or photograph.

(ii) A copy of a current health certificate, including documentation of a negative TB test, signed by a state licensed veterinarian within 14 days of the transfer stating that the NHP(s) appear healthy and are free from communicable diseases; and

(iii) Documentation which verifies that the recipient zoo is registered in accordance with this section, and

(iv) A specific itinerary with names, dates, flights, times, airports, seaports, and responsible parties to contact at every step of travel, including all ground transportation.

(3) Persons importing live NHPs that are transferred from one zoo to another, who are not able to meet the requirements listed in paragraphs (p)(2)(i) and (ii) of this section, must comply with all the elements in paragraphs (g), (h), (i), (j), (k), (l), (m), and (n) of this section.

(q) Laboratory-to-laboratory transfers. (1) A laboratory transferring NHPs on an established research protocol from its foreign-based facility to its U.S.-based laboratory must comply with all the elements listed in paragraphs (g), (h), (i), (j), (k), and (n) of this section; and paragraphs (m)(1), (m)(2), (m)(5), and (m)(6) of this section.

(2) If a lab is receiving one or more NHPs for purposes related to an ongoing research project from another established research facility outside the United States, the recipient facility must, before the transfer, submit the following to HHS/CDC for approval:

(i) A copy of each NHP's veterinary medical records, including regular testing for TB from the previous lab for HHS/CDC's approval. The medical record should include a positive identification of the NHP, such as a tattoo, microchip, or photograph.

(ii) A copy of a current health certificate(s), including documentation of a negative TST, signed by a state-licensed veterinarian within 14 days of the transfer stating that the NHP(s) appear healthy and are free from communicable diseases; and

(iii) Documentation of the ongoing IACUC-approved research project and the reason the NHP needs to be transported to the U.S. laboratory facility.

(iv) A specific itinerary with names, dates, flights, times, airports, seaports, and responsible parties to contact at every step of travel, including all ground transportation.

(3) Persons importing live NHPs that are transferred from one lab to another, who are not able to meet the requirements listed in paragraphs (q)(2)(i), (ii), and (iii) of this section, must comply with all the elements in paragraphs (g), (h), (i), (j), (k), (l), (m), and (n) of this section.

(r) In transit shipments of NHPs. (1) Before arrival into the United States, brokers of in transit shipments must notify HHS/CDC of all scheduled in transit shipments of NHPs not intended for import into the United States and provide the following information:

(i) Number and species of NHPs in the shipment;

(ii) Origin of NHPs, including the country, the exporter, and the exporter's address;

(iii) Name and full address of the final destination quarantine facility in the importing country;

(iv) Means of individually identifying NHPs, if required by the importing country;

(v) A specific itinerary while in the United States including names, dates, flights, times, airports, seaports, and responsible parties to contact at every step of travel within the United States, including all ground transportation;

(vi) Description of crates;

(vii) SOPs describing procedures to protect and train transport workers from exposure to communicable disease while handling NHPs;

(viii) SOPs describing procedures to prevent contamination of other articles and cargo during transit, including physical separation of crates from other cargo;

(ix) SOPs describing procedures to decontaminate aircraft, ships, vehicles, and related equipment following transport; and

(x) Proposed use, if any, of in transit holding facilities and steps to be taken to protect workers, as well as NHPs, from communicable disease exposure at each facility to be used en route.

(2) While located in the United States, in transit shipments must be housed and cared for in a manner consistent with requirements for NHPs intended for import into the United States as specified in paragraphs (j) and (k) of this section.

(s) Revocation and reinstatement of an importer's registration. (1) If the Director determines that an importer has failed to comply with any applicable provisions of this section, including the importer's SOPs, the Director may revoke the importer's registration.

(2) HHS/CDC will send the importer a notice of revocation stating the grounds upon which the proposed revocation is based.

(i) If the importer wishes to contest the revocation, the importer must file a written response to the notice within 20 calendar days after receiving the notice.

(A) As part of the response, an importer may request that the Director review the written record.

(B) If an importer fails to file a response within 20 calendar days, all of the grounds listed in the proposed revocation will be deemed admitted, in which case the notice shall constitute final agency action.

(ii) [Reserved]

(3) If an importer's response is timely, the Director will review the registration, the notice of revocation, and the response, and make a decision in writing based on the written record.

(4) As soon as practicable after completing the written record review, the Director will issue a decision in writing that shall constitute final agency action. The Director will serve the importer with a copy of the written decision.

(5) The Director may reinstate a revoked registration after inspecting the importer's facility, examining its records, conferring with the importer, and receiving information and assurance from the importer of compliance with the requirements of this section.

(t) Nonhuman primate products. (1) NHP products may be imported without obtaining a permit under this section if accompanied by documentation demonstrating that the products have been rendered noninfectious using one of the following methods:

(i) Boiling in water for an appropriate time so as to ensure that any matter other than bone, horns, hooves, claws, antlers, or teeth is removed; or

(ii) Gamma irradiation at a dose of at least 20 kilo Gray at room temperature (20° C or higher); or

(iii) Soaking, with agitation, in a 4% (w/v) solution of washing soda (sodium carbonate, Na_2CO_3) maintained at pH 11.5 or above for at least 48 hours; or

(iv) Soaking, with agitation, in a formic acid solution (100 kg salt [NaCl] and 12 kg formic acid per 1,000 liters water) maintained at below pH 3.0 for at least 48 hours; wetting and dressing agents may be added;

(v) In the case of raw hides, salting for at least 28 days with sea salt containing 2% washing soda (sodium carbonate, Na_2CO_3);

(vi) Formalin fixation; or

(vii) Another method approved by HHS/CDC.

(viii) Fully taxidermied products are considered rendered noninfectious, and so do not require a permit from the Director.

(2) NHP products that have not been rendered noninfectious are considered to pose a potential human health risk and may only be imported under the following circumstances:

(i) The product must be accompanied by a permit issued by the Director. Requests for permits should be accompanied by an explanation of the product's intended use and a description of how the product will be handled to ensure that it does not pose a zoonotic disease threat to humans. The Director will review the request for a permit, and accompanying materials, and issue a decision that shall constitute final agency action.

(ii) The product may only be imported for bona fide scientific, educational, or exhibition purposes.

(iii) A permit will only be issued if the product will be received by a facility equipped to handle potentially infectious NHP materials.

(iv) The product must comply with any other applicable federal requirements, including those relating to packaging, shipping, and transport of potentially infectious, biohazardous substances as well as those for select agents pursuant to 42 CFR part 73, 7 CFR part 331, and 9 CFR part 121.

(u) Appeal of denial for a permit to import. If the HHS/CDC denies your request for a permit under this section, you may appeal that denial to the HHS/CDC Director.

(1) You must submit your appeal in writing to the HHS/CDC Director, stating the reasons for the appeal and demonstrating that there is a genuine and substantial issue of fact in dispute.

(2) You must submit the appeal within 5 business days after you receive the denial.

(3) HHS/CDC will issue a written response to the appeal, which shall constitute final Agency action.

(v) Filovirus testing fee. (1) Non-human primate importers shall be charged a fee for filovirus testing of non-human primate liver samples submitted to the Centers for Disease Control and Prevention (CDC).

(2) The fee shall be based on the cost of reagents and other materials necessary to perform the testing; the use of the laboratory testing facility; irradiation for inactivation of the sample; personnel costs associated with performance of the laboratory tests; and administrative costs for test planning, review of assay results, and dissemination of test results.

(3) An up-to-date fee schedule is available from the Division of Global Migration & Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road, Atlanta, Georgia 30333. Any changes in the fee schedule will be published in the **Federal Register**.

(4) The fee must be paid in U.S. dollars at the time that the importer submits the specimens to HHS/CDC for testing.

Dated: February 6, 2013.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2013–03064 Filed 2–14–13; 8:45 am]

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FEDERAL REGISTER

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Part VII

The President

Notice of February 13, 2013—Continuation of the National Emergency With Respect to Libya

Federal Register

Vol. 78, No. 32

Friday, February 15, 2013

Presidential Documents

Title 3—

The President

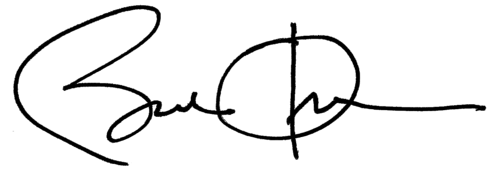
Notice of February 13, 2013

Continuation of the National Emergency With Respect to Libya

On February 25, 2011, by Executive Order 13566, I declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by Colonel Muammar Qadhafi, his government, and close associates who took extreme measures against the people of Libya, including by using weapons of war, mercenaries, and wanton violence against unarmed civilians. In addition, there was a serious risk that Libyan state assets would be misappropriated by Qadhafi, members of his government, members of his family, or his close associates if those assets were not protected. The foregoing circumstances, the prolonged attacks, and the increased numbers of Libyans seeking refuge in other countries caused a deterioration in the security of Libya and posed a serious risk to its stability.

We are in the process of winding down the sanctions in response to developments in Libya, including the fall of Qadhafi and his government and the establishment of a democratically elected government. We are working closely with the new Libyan government and with the international community to effectively and appropriately ease restrictions on sanctioned entities, including by taking action consistent with the U.N. Security Council's decision to lift sanctions against the Central Bank of Libya and two other entities on December 16, 2011. The situation in Libya, however, continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States and we need to protect against this threat and the diversion of assets or other abuse by certain members of Qadhafi's family and other former regime officials. Therefore, the national emergency declared on February 25, 2011, and the measures adopted on that date to deal with that emergency, must continue in effect beyond February 25, 2013. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13566.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
February 13, 2013.

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H.R. 325/P.L. 113–3

No Budget, No Pay Act of 2013 (Feb. 4, 2013; 127 Stat. 51)

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